No. 84-16

In the Supreme Court
OF THE
United States

Kenneth Cory, Leo T. McCarthy, and
Jesse R. Huff, members of the
California State Lands Commission,
Appellants,

vs.

Western Oil & Gas Association, et al.,
Appellees.

On Appeal from the United States Court of Appeals for the Ninth Circuit

JOINT APPENDIX (Vol. II)

John K. Van de Kamp
Attorney General of the
State of California
N. Gregory Taylor
Assistant Attorney
General
Dennis M. Eagan
Deputy Attorney General
(Counsel of Record)
6000 State Building
San Francisco, CA 94102
Telephone: (415) 557-3650
Counsel for Appellants

Philip K. Verleger
(Counsel of Record)
Betty-Jane Kirwan
John P. Zaimes
McCutchen, Black,
Verleger & Shea
600 Wilshire Boulevard
Los Angeles, CA 90017
Telephone: (213) 624-2400
Counsel for Appellees

Appeal docketed July 5, 1984
Probable jurisdiction noted October 1, 1984

BOWNE OF SAN FRANCISCO, INC. • 190 NINTH ST. • S.F., CA 94103 • (415) 864-2300

129

TABLE OF CONTENTS

Volume II

Excerpts from the administrative record compiled before the California State Lands Commission in connection with the adoption of the challenged regulations, lodged with the district court on January 5, 1981.

Table of Contents
Volume II

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*Printed as Exhibit 1 to the affidavit of Gary R. Horn, set forth earlier in this Joint Appendix, and not reprinted here.

STATEMENT BY STANDARD OIL COMPANY OF CALIFORNIA

DATED MAY 2, 1975

Statement on behalf of
Standard Oil Company of California
before Administrative Hearing of California State
Lands Division regarding the proposed revision of
Article 2, 2 California Administrative Code

Friday, May 2, 1975
Long Beach, California

My name is John T. Brewster. I am Manager of the Pipe Line Department of Standard Oil Company of California's Western Operations, Incorporated. I appreciate the opportunity to present to you my company's reactions to the proposal to repeal Article 2 of California Administrative Code, Title 2, Division 3, and adopt a new Article 2 thereof.

I will confine my comments to those portions of the proposed Article 2 that would immediately affect my company, the petroleum industry in California, and through them the consuming population of the State.

We agree that for Industrial Leases rental rates computed at the rate of 8% per annum of the appraised value of the leased land is equitable under present day conditions. As you know, we have in the past objected and continue to object to the method of appraisal used by the Lands Division that equates the value of submerged land with that of developed or developable adjoining onshore lands. This we consider to still be a matter for good faith negotiation between the State and the private parties involved.

We feel very strongly that the application of a throughput charge to determine the rental for unimproved submerged lands is highly inequitable and will have over-all consequences unfavorable to the people of the State.

Inasmuch as the State does not provide the pipelines, wharves or other facilities used, the value of the rights-of-way and occupancy over State lands has no logical relation to the number of barrels of petroleum or cubic feet of natural gas that may be transmitted through pipelines or over wharves built by a lessee. In effect it would amount to a toll or tax on the commodities for crossing State land. The throughput charges in the current proposal demonstrate their gross inequity as rental for space occupied, as illustrated by some examples:

1. Consider a hypothetical 3,200-foot long 18-inch submarine pipeline at a marine terminal loading 40,000 barrels per day of crude oil to tankers. The proposed rate of 1.6¢ per barrel would total $233,600 per year. The area of ocean bottom occupied by the pipeline would be only 0.110 acres. The annual rental would be equivalent to over *$2 million per acre per year*. At 8% this would represent a value of over *twenty-six million dollars per acre* for the occupied strip of ocean bottom.

2. My company has an eight-inch diameter petroleum products pipeline from its Richmond, California, refinery to Sacramento. It crosses Honker Bay, four sloughs, and the Sacramento River. We have a twenty-five foot wide right-of-way lease from State Lands across each. The total leased area is 2.54 acres. The proposed charges, based on our throughput of about 9,000 barrels per day, would total 4.2¢ per barrel, or $137,970 per year. This is equivalent to a rental of $54,319 per acre per year. At 8% it represents a land value of $679,000 per acre for underwater mud.

In the second example above, the present total annual charge for the six water crossings is $336. The increase would be $4,000%.

For our existing Estero Bay Marine Terminal the increase would be 1,100%. For Richmond Refinery's two wharves it would be 4,250%.

As startling as these per-acre rentals and tremendous increases are, they are not the end. The cumulative effect on the public and the economy of California would be much greater than is apparent by considering the throughput charge at any specific location. To illustrate, using the proposed charges:

Crude oil is loaded to tankers at our Estero Bay Terminal for shipment to Richmond Refinery	1.6¢/bbl.
Crude offloaded to Refinery	1.4¢/bbl.
Fuel Oil produced, loaded to tankers from Refinery	1.4¢/bbl.
Fuel Oil offloaded to coastal power plant—approximately	1.6¢/bbl.
Total transportation increase	6.0¢ bbl.

The increased cost of fuel to the electric utility and the increased cost of delivering petroleum products to Sacramento cited above will, in the end, be paid by the California public, which illustrates again that a throughput charge would be a tax and not a rental.

Even this may not be the end. A precedent set by the State Lands Commission could well be adopted by counties and cities of the State for the thousands of miles of oil and gas pipelines that run under their roads and streets on franchises. If each local government were to adopt a schedule similar to the present proposal, the total could be in dollars, rather than cents, per barrel or per 6,000 cubic feet of gas. Who would pay? The people of the State.

The proposed throughput charges are so grossly disproportionate to the value of the tide and submerged lands occupied by pipelines and terminal facilities that one would have to conclude that the State Lands Commission is willing, if it adopts them, to ignore the fundamental premise on which its actions are based. California's tide and submerged lands are held under a common law trust for the benefit of the people; and the administration of those

lands is an exercise—or breach—of trust powers, not proprietary powers. The effect of the proposed throughput charges would not be to foster, but to hinder, the use and development of the State's tide and submerged lands, and the charges would not "milk" those who have made substantial investments in reliance on prior State Lands Commission policies but would, instead, contribute significantly to the inflation of energy costs and operate to plunder the pocketbooks of California's consumers of electric power, natural gas, and petroleum products, and indirectly, all segments of the public. It should be made clear to the public that it is they, not the petroleum industry and natural gas utilities, that would be the ultimate victims of this rapacity.

In summary, Standard Oil Company of California feels that 8% per annum is a fair return on a fair appraised value of State Lands. We consider any throughput charge used as the basis for land rental or right-of-way to be inappropriate and to threaten far-reaching consequences to the California oil and natural gas industries and the public.

We consider the specific schedules of throughput charges proposed to be unreasonable in relation to value rendered by the State in leasing unimproved submerged lands, and particularly call to your attention the pyramiding effect of throughput-added-to-throughput.

We urge, therefore, that the State Lands Commission retain substantially the present regulation as the basis for rentals, particularly as a means of avoiding an untimely and adverse impact on the people and economy of California.

STATEMENT BY GULF OIL COMPANY

DATED MAY 2, 1975

Statement of Spencer C. Sheldon
Regional Director of Governmental Relations
Gulf Oil Company—U.S.
at the Public Hearings of the
California State Lands Commission
May 2, 1975
Long Beach, California
Concerning Proposed Rules and Regulations
for State Non-Extractive Leases

Gentlemen:

I am Spencer C. Sheldon, Regional Director of Governmental Relations for Gulf Oil Company—U.S., the domestic operating arm of Gulf Oil Corporation.

I would like to express our appreciation at having this opportunity to present Gulf's views on the State Lands Commission's newly proposed rules and regulations for non-extractive leases.

As the staff well know, Gulf in the past has objected to the basis on which the appraised value of the state's submerged leased lands have been determined. We continue to object to appraisal techniques that only look to the highest per acre rent that has been agreed to by the most recent lessee of state lands.

Because the State Lands Commission holds a position of virtual monopoly over the tracts of state land that are the essential corridors to California's centers of commerce and industry, they have gone past the point of seeking the full and fair rental the citizens of California are rightly entitled to for the exclusive use of state lands by a commercial company. The proposal of these new regulations indicates however, the endorsement of a residual appraisal technique that is consistent with the Commission's monopoly position.

A technique which says in essence; Mr. Lessee, because your facility must shut down, and is therefore worth nothing without a state lease, it follows that the state lease is worth the full cost or value of your facility.

An appraisal approach which follows this fallacious line of reasoning is certainly not in the best interest of California consumers as they must pay in the long run all costs imposed on business. We suggest that this problem will not be corrected until the staff of the Commission makes a concerted effort to key the value of state submerged lands to those upland tracts whose value has been determined by the action of a free market.

Let me now turn from Section 2006 of the proposed regulations to Section 2008, which proposes to establish a throughput charge for pipelines. The cover letter sent out with these proposed regulations makes the point that the throughput rental is "designed to bring Commission leasing policies into line with practice commonly used by ports, the most comparable leasing entities to the Commission." This is a totally inaccurate comparison because unlike facilities on state lands, the facilities controlled by the various Port Authorities operating in California's harbors have been constructed with funds raised by those entities. The fees charged by them are necessary to recover *their* capital investment, the cost of maintaining *their* facilities and a return on the invested capital sufficient to pay the interest charges necessary in cases where the original capital was obtained by the issuance of bonds or other debt instruments.

In the case of the State Lands Commission, there is no capital investment to recover. As in the case of Gulf facilities, it is Gulf that has invested capital to construct the wharf facilities on the state lands that we lease and it is Gulf that pays the maintenance costs and takes the risk of damage or destruction.

In consideration of these proposed regulations, I would also hope that the staff would be able to provide a full analysis to the Commission as to their effect on, and interrelation with, programs and objectives of other state agencies.

For instance, has data been developed by the staff which sets out with any certainty, the effects the proposed throughput charge will have on sources of crude oils currently being used by California refiners. That is, will the environmental objectives of agencies such as the Air Resources Board be mitigated or frustrated to any extent because these proposed regulations cause a shift in normal crude oil supply channels.

I don't know the answer to the question, but I think it important that the Commission does, before it takes any action on these proposals.

In a similar area, California's new Energy Resources Conservation and Development Commission has been working closely during the last several months with the various segments of the energy industry for the implementation of a centralized state energy information system as mandated by the legislature last year. These quarterly energy reports will contain both historical operating data and company projections for a subsequent twelve month period and will go a long way in permitting state agencies to understand the dynamics of the California energy market. The first reports are now being filed with the Energy Commission. And in our opinion, it would be untimely and imprudent for the State Lands Commission to take any action on these proposed regulations until the Energy Commission has been afforded an opportunity to analyse their significance and effect on California energy consumers.

And finally, it is clear to me that a throughput charge which would increase Gulf's annual payments with respect to only one of its California refiners by approximately

950%; a throughput charge that is not required as the result of any capital invested by the State, as is the case with Port leasing entities, can not be characterized as a rental, but is in fact a general revenue tax.

If a new tax is what we are talking about, and I believe it is, then we are in the wrong forum. While certainly the State Lands Commission has sufficient mandated authority to regulate the use of state lands and determine their fair rent, it does not have authority to impose taxes through regulation. That is a privilege that continues to be reserved by the California Constitution to the State Legislature.

I suggest that the Commissioners of State Lands Commission have more than sufficient political influence to have the tax measure embodied in Section 2008 of the proposed regulations placed before the California Legislature. While I can assure you my company would continue to oppose such a tax before the Legislature, as I assume would others, I am convinced that that would be the correct forum for this tax proposal to be debated and acted upon.

Again, I want to thank you for the opportunity to express these views.

STATE LANDS COMMISSION QUESTIONNAIRE DATED JUNE 19, 1975

June 19, 1975
File Ref.: W 5125.8

Pacific Gas & Electric Company
77 Beale Street
San Francisco, CA 94106

Attention: R. W. O'Neill

Gentlemen:

Subject: *Commission Leasing Rental Based On "Throughput"*

Pursuant to the State Lands Commission's May 27, 1975 authorization for staff to further investigate the concept of rental rates based on throughput (see Attachment A), I have been requested to obtain information from your company relevant to the new Article 2 (Section 2000 et. seq.) of Title 2, California Administrative Code. This is in response to the request of many to have additional discussion and analysis of the proposed rental policy based on "throughput."

Attached hereto (Attachment B) is a list of questions relevant to this investigation. The Commission has deferred action anticipating a timely response to these questions preparatory to open discussions with you and other entities that may be affected by such changes to the Commission's regulations. I anticipate holding several informal open discussions with major interest groups (i.e. oil companies and/or Western Oil and Gas Association, utility companies, pipepline companies, etc.) during the latter part of July. The purpose of these meetings will be to clarify, update and analyze the responses received on the attached questionnaire.

You are requested to provide responses to the questions, in appropriate detail, by mid-July. Include any relevant

data that may apply regarding this study. I will contact you again in the near future regarding the dates and times of the aforementioned open discussions.

Please feel free to call me at (916) 445-7738 should you have any questions on the information requested.

Sincerely,

GARY R. HORN
Land Agent

[Attachment A omitted in printing]

Attachment B

1a. Identify by geographic area and State Lands Commission lease number the annual volume of petroleum products crossing lands under the State Lands Commission's jurisdiction. Petroleum products shall include crude products, petroleum derivatives, natural gas, etc. (in barrels and/or thousand cubic feet).

1b. Identify by geographic area the above information projected through the year 1980.

1c. Identify by geographic area any plans for additional facilities to be located on, or to cross land under State Lands Commission jurisdiction in the next five years.

2. Identify any existing leases for which you are currently paying rent based on throughput. Include leases with public agencies and port districts as well as private parties. Information should include the lessor, the area of lease, length and size of pipeline, terms, conditions, and rental rates.

3a. Identify any of your facilities not on State Lands Commission land, which you lease to other parties on the basis of throughput. Information should include name of lessee, area of lease, length and size of pipeline, terms, conditions and rental rates.

4a. Identify any of your facilities under State Lands Commission jurisdiction, which are operated for the convenience and purpose of supplying petroleum products to a governmental agency. Identify the agency, the amount supplied to it annually, the rate for delivery, and the State Lands Commission lease number.

4b. Identify any of your facilities not under State Lands Commission jurisdiction which are operated for the convenience and purpose of supplying petroleum products to a governmental agency. Identify the agency, the facility, the amount supplied, and the rate for delivery.

4c. Identify whether the rental rates for the above leases vary from the rate for other petroleum products delivered at the same facility. If it does vary, identify the special rental rate.

5a. Identify any of your pipeline facilities that are regulated by the ICC and/or the CPUC.

5b. Forward a copy of the tariff for each pipeline route identified above.

5c. Upon what basis was the transportation rate in the tariff computed? What services are included in this transportation rate?

6. Identify any effect that a throughput rental rate will have on your pipeline operations.

7. Will you authorize the release of pertinent data contained in agreements between your company and any other company, corporation, or individual regarding the sale and transportation of petroleum and related products?

RESPONSE OF HOLLY CORPORATION

JULY 2, 1975

Mr. Gary R. Horn
Land Agent
State Lands Division
1807 13th Street
Sacramento, California 94814

Re: *Commission Leasing Rental Based on "Throughput"*

Dear Mr. Horn:

In regards to your letter dated June 25. 1975, requiring certain information regarding our dock which is located on State owned lands, hopefully the following will satisfy your requirements:

1a. The Holly Corporation owns and operates the Ozol terminal which is located approximately 2½ miles west of Martinez on the south side of the Carquinez Straits. At the present time we handle two types of products at the terminal, being government owned JP-4 and government owned 115/145 aviation gas. At the present time the majority of our receipts to the terminal come by the way of tanker and barge; receipts being approximately 3,000,000 barrels per year. The majority of the receipts being JP-4. Our State Lands Commission Lease is No. 2408.1.

1b. We project approximately 3,000,000 barrels per year of receipts through 1980. It must be noted that this projection is hard to determine due to the fact that the government has exclusive use of the terminal, and all shipments and receipts are directed by them.

1c. At the present time we do not have any plans for additional facilities to be located on or to cross land under the State Lands Commission jurisdiction.

2. We do not have any existing leases for which we are currently paying rent based on throughput.

3a, 4a & 4b. As previously noted, our terminal is under exclusive lease to the Defense Fuel Supply Center. Our terminal lies on approximately 42 acres of land, exclusive of the dock lease. There are 12 83,333 barrel underground storage tanks. In addition we have an 8" pipe line approximately 8 miles in length which connects to our Concord pump station. At the present time the government has one year options to renew this lease through May, 1980. The rental rates for this terminaling is based on a use charge per barrel of shell capacity per year. We do charge the government for excess throughput provided that the receipts and shipments exceed 3,100,000 barrels.

4c. Not applicable.

5a. As mentioned above, we have a 8" pipe line approximately 8 miles in length connecting our terminal to our Concord pump station.

5b. Not applicable.

5c. Not applicable.

6. As has been previously noted, the government is the exclusive lessee of our terminal under a contract which was negotiated approximately 15 years ago. Our lease rate is substantially lower than commercial rates in that area. In addition, exclusive of the throughput charges, our contract is a fixed price type and any increase in rental rates for our dock will have a negative effect on our operation, especially since our Ozol terminal operations have been experiencing an operating deficit for the past several years.

7. Any releases of pertinent data pertaining to agreements between our company or any other company, corporation or individual regarding the sale and transportation of petroleum and related products will have to be determined on an individual basis.

Sincerely yours,

/s/ David B. Norsworthy
Operations Manager

DBN/pf

RESPONSE OF BURMAH OIL AND GAS COMPANY

JULY 11, 1975

California State Lands Commission
State Lands Division
1807 13th Street
Sacramento, California 95814
Attention: Mr. G. R. Horn

Gentlemen:

In reply to your letter of June 19, 1975, requesting responses to questions posed in your Attachment B, we have provided the following information to the specific questions relevant to Burmah Oil and Gas Company's operations:

Commission Leasing Rental Based on Throughput
Attachment B

1a. Burmah Ellwood Marine Terminal
P.R.C. 3904.1—$278.00 annual fee
1,460,000 barrels through marine loading line annually.

1b. Burmah Ellwood Marine Terminal projected throughput through the year 1980—3,650,000 barrels (Based on abandonment by end of 1977).

1c. Proposed Burmah Dos Pueblos Marine Terminal Ellwood area.

2. Burmah Stockton Terminal, leased from the Stockton Port District. Land rent for ±5.33 acres is $573.00 per month plus a $.005 per barrel charge for all pipeline receipts into terminal via Southern Pacific Pipe Line Company.

6. A rental based on throughput would result in increased operating cost with no compensating services or benefits accruing to the affected businesses.

7. This would be questionable.

Yours very truly,

/s/ Ray T. Togni
Ray T. Togni,
Superintendent of Terminals

RTT:mds

cc: J. H. Loeb
C. E. Woods
R. Goggins

RESPONSE OF PACIFIC GAS AND ELECTRIC COMPANY

JULY 14, 1975

SLC Leasing Rental Based on "Throughput"
Your File: W 5125.B
State Lands Commission
State Lands Division
1807 13th Street
Sacramento, California 95814
Attention: Mr. Gary R. Horn,
Land Agent

Gentlemen:

In your letter of June 19, you asked that we supply the answers to seven questions relevant to the investigation of the concept of pipeline lease rental rates based on quantities of gas transported (throughput charge) for the use of State Lands Commission (SLC) administered lands. PGandE has attempted to answer these questions as completely as is possible considering the scope, diversity, and complexity of pipeline operations within our service area. PGandE welcomes informal open discussions with your staff because it will enable us to discuss in detail the important legal, social, and economic issues raised by your proposal to change the factors upon which rental for pipeline rights of way has traditionally been based.

If PGandE can be of any further assistance, please call Elmer H. Dunstan, (415) 781-4211, extension 2462.

Very truly yours,

/s/ P. J. Matthews
P. J. Matthews
Supervisor of Permits and
Environmental Planning

EHDunstan:MZ
Attachments

EXHIBIT "A"

1a. Identify by geographic area and State Lands Commission lease number the annual volume of petroleum products crossing lands under the State Lands Commission's jurisdiction. Petroleum products shall include crude products, petroleum derivatives, natural gas, etc. (in barrels and/or thousand cubic feet).

1b. Identify by geographic area the above information projected through the year 1980.

P.R.C. Number	SLC Lands	Geographic Location T.	R.	Sec.	Mer.	Annual Volume of Petroleum Products (BCF) 1974	1975	1976	1977	1978	1979	1980
1402.1	Mokelumne River	4N.	4E.	17	MDB&M	4.7	4.87	5.04	5.21	5.38	5.55	5.72
2536.1	Sacramento River	4N.	4E.	17		NA						NA
2538.1	Georgiana Slough	4N.	4E.	20		NA						Not Available
611.1	Sacramento River	4N.	4E.	17		NA						NA
3956.1	Georgiana Slough	4N.	4E.	16		NA						NA
4037.1	S. Fk. Mokelumne River	4N.	5E.	7		.02	.018	.016	.014	.012	.010	.008
362.1	Mokelumne River	4N.	6E.	21		.03	.031	.332	.033	.034	.035	.036
4018.1	Mokelumne River	4N.	6E.	35		13.5			No Change			13.5
4902.1	Mokelumne River	4N.	6E.	21		4.5						4.5
2477.1	Snodgrass Slough	5N.	4E.	36		NA						NA
2612.1	Georgiana Slough	5N.	4E.	35		NA						NA
461.1	Sacramento River	9N.	4E.	28		NA						NA
1777.1	Sacramento River	8N.	4E.	3		NA						NA
2817.1	Sacramento River	14N.	1E.	8		1.8	1.62	1.44	1.26	1.08	.9	.72
4021.1	Old River	1S.	4E.	20		.31	.279	.248	.217	.186	.155	.124
2953.1	San Joaquin River	1S.	6E.	5		.75	.675	.600	.525	.450	.375	.300

P.R.C. Number	SLC Lands	Geographic Location T.	R.	Sec.	Mer.	Annual Volume of Petroleum Products (BCF) 1974	1975	1976	1977	1978	1979	1980
3610.1	Stanislaus River	2S.	8E.	29	MDB&M	7.3	7.63	7.96	8.29	8.62	8.95	9.28
3772.1	Stanislaus River	2S.	9E.	24		.075	.078	.082	.085	.089	.092	.095
407.1	San Joaquin River	3S.	6E.	13		23.8	24.7	25.5	26.4	27.2	28.1	29.0
590.1	Tuolumne River	3S.	9E.	33		NA						NA
3641.1	Tuolumne River	4S.	8E.	11		NA						NA
353.1	Tuolumne River	4S.	8E.	11		4.3	5.02	5.23	5.45	5.66	5.88	6.10
4672.1	San Joaquin River	5S.	8E.	36		2.74	2.84	2.94	3.04	3.14	3.24	3.34
459.1	San Joaquin River	13S.	18E.	6		NA						NA
1531.1	School Lands (Trona)	28S.	41E.	16		16.2						16.2
1487.1	Corte Madera Creek	1N.	6W.	10		4.2	4.33	4.45	4.58	4.70	4.83	4.96
2805.1	Grizzly Slough	3N.	1W.	13		NA						NA
2804.1	Roaring River	3N.	1W.	24		NA						NA
726.1	Petaluma Creek	4N.	7W.	2		NA						NA
1981.1	Petaluma Creek	4N.	7W.	2		11.7	12.1	12.4	12.8	13.1	13.5	13.9
762.1	Napa River	5N.	4W.	34		14.5	15.01	15.52	16.03	16.54	17.05	17.56
646.1	Napa River	5N.	4W.	11		14.5	15.01	15.52	16.03	16.54	17.05	17.56
4586.1	Sacramento River	15N.	1W.	4		6.64	5.98	5.31	4.65	3.98	3.32	2.66
						132.065						145.563
2906.1	Old River	1N.	4E.	6		11.7			No Change			11.7
498.	Old River	1N.	4E.	6		11.7						11.7
4020.1	Middle River	1N.	4E.	36		.31	.279	.248	.217	.186	.155	.124
2592.1	San Joaquin River	1N.	6E.	8		.067	.069	.072	.074	.077	.079	.081
2803.1	Honker Bay	2N.	1W.			NA						NA
1867.	San Joaquin River	2N.	2E.	10		20.2	18.5	16.8	15.2	13.5	11.8	10.1

P.R.C. Number	SLC Lands	Geographic Location T.	R.	Sec.	Mer.	Annual Volume of Petroleum Products (BCF) 1974	1975	1976	1977	1978	1979	1980
2480.1	San Joaquin River	2N.	2E.	10	MDB&M	11.7	10.7	9.8	8.8	7.8	6.9	5.9
2570.1	Mayberry Slough	2N.	2E.	9		204.	186.	168.	150.	133.	115.	97.
2572.1	San Joaquin River	2N.	2E.	9		102.	93.	84.4	75.6	66.8	58.	49.0
3202.1	San Joaquin River	2N.	2E.	9		102.	93.	84.4	75.6	66.8	58.	49.0
3422.1	Taylor Slough	2N.	3E.	16		5.						5.0
497.1	Middle River	2N.	4E.			23.4						23.4
499.1A	Whisky Slough	2N.	4E.	25		5.84						5.84
499.1B	Whisky Slough	2N.	4E.	25		11.7						11.7
499.1C	Whisky Slough	2N.	4E.	25		11.7						11.7
495.1	Latham Slough	2N.	4E.	34		23.4						23.4
2904.1	Middle River	2N.	4E.	33		23.4						23.4
2907.1	Latham Slough	2N.	4E.	34		23.4						23.4
4868.1	Latham Slough	2N.	4E.	33		46.6						46.6
4868.1	Middle River	2N.	4E.	33		46.6						46.6
4868.1	Old River	2N.	4E.	33		46.6						46.6
2663.1	Whisky Slough	2N.	5E.	31		23.4						23.4
1868.1	San Joaquin River	3N.	2E.	22		20.2	18.5	16.5	15.2	13.5	11.8	10.1
2539.1	Sacramento River	3N.	2E.	28		204.	186.	168.	150.	133.	115.	97.
2481.1	Three Mile Slough	3N.	3E.	7		11.7	10.7	9.8	8.8	7.8	6.9	5.9
728.1	Three Mile Slough	3N.	3E.	7		20.2						20.2
2009.1	San Joaquin River	2N.	3E.	23		.2	.2	.2	.2	.1	.1	.1
2807.1	Nurse Slough	4N.	1E.			NA						NA
149.1	Sacramento River	4N.	3E.	31		NA						NA
529.1	Sacramento River	4N.	3E.	25		.2	.2	.2	.2	.1	.1	.1
596.1	Georgiana River	4N.	4E.	17		NA						NA
2639.1	Mokelumne River	4N.	4E.	10		.02	.018	.016	.014	.012	.01	.008

P.R.C. Number	SLC Lands	Geographic Location T.	R.	Sec.	Mer.	Annual Volume of Petroleum Products (BCF) 1974	1975	1976	1977	1978	1980	1980
2905.1	S. Fk. Mokelumne River	4N.	4E.	1		NA						.16
1402.1	Mokelumne River	4N.	4E.	17		4.7	4.87	5.04	5.21	5.38	5.55	5.75
						1,015.937						664.773
1838.1	Sacramento River	20N.	1E.	32		2.4			No Change		2.4	
3410.1	Sacramento River	20N.	1E.	32		2.4					2.4	
176.1	Sacramento River	21N.	1E.	22		NA						NA
2822.1	Sacramento River	32N.	5E.	36	MDB&M	4.82	5.29	5.77	6.24	6.72	7.19	7.66
1695.1	Colorado River	7N.	24E.	8	SBB&M	200.	186.	173.	159.	146.	132.	119.
2625.1	Colorado River	7N.	24E.	8	SBB&M	200.	186.	173.	159.	146.	132.	119.
2573.1	Sacramento River	27N.	3W.		MDB&M	346.	348.	350.	351.	353.	355.	357.
1571.1	Fisherman's Cut	3N.	3E.			.2	.2	.2	.2	.1	.1	.1
1390.1	Morro Bay	29S.	10E.			3.4 M^{3}Bbls.**	4.4	3.7	5.1	5.6	5.2	5.2

*BCF = Billion Cubic Feet of Natural Gas
**M^{3}Bbls. = Million Barrels of Crude Oil

1c. Identify by geographic area any plans for additional facilities to be located on, or to cross land under State Lands Commission jurisdiction in the next five years.

P.R.C. Number	SLC Lands	Geographic Location T.	R.	Sec.	Mer.	Projected Service	Remarks	
	Middle River	1S.	5E.	24	MDB&M	1976	Proposed crossing within San Joaquin Co. Bridge	
	Merced River	6S.	11E.		MDB&M	1979	Parallel existing facilities	
	Salinas River	15S.	3E.		MDB&M	1976	Replace present facilities	
762.1	Napa River	5N.	4E.	34	MDB&M	1979	Replace present facilities	
						759.220		607.960
						1,907.222		1,418.296

EXHIBIT "B"

2. Identify any existing leases for which you are currently paying rent based on throughput. Include leases with public agencies and port districts as well as private parties. Information should include the lessor, the area of lease, length and size of pipeline, terms, conditions, and rental rates.

Power Plant Locations	Throughput Charges
Hunters Point Power Plant	\$.35/T* to Port of S.F.
Potrero Power Plant	\$.35/T* to Port of S.F.
Humboldt Bay Power Plant	The greater of either \$.02239/Bbl or \$15,000/yr.
Offsite Storage	
Urich Oil Co. (UCO), Martinez**	\$.03/Bbl on 30,000 Bbl/day Min.
Bray Oil Co., Richmond	\$.35/Bbl, includes receipt by rail, storage, heating and delivery into barges.
ARCO, Richmond	\$2,200/Mo./Tank (4 tanks) plus \$.05/Bbl throughput charge

*1 Ton = 2,200 lbs. = approximately 7 barrels of fuel oil.
**Facility not yet operational.

The above figures cannot in all cases be compared on a common basis and the numbers show only actual costs. The power plant locations are suitable for barge deliveries only. The barges used are generally those under long-term lease by us.

PGandE does not own any part of the facilities at any of the three offsite storage locations under contract. They are: Bray Oil Terminal and ARCO Terminal, both located on the Santa Fe Channel in Richmond and the Urich Oil Company Terminal located in Martinez.

At PGandE's Potrero and Hunters Point Power Plants the two fuel oil receiving docks are leased from the Port of San Francisco with all transition piping to the power plants owned and operated by PGandE.

At PGandE's Humboldt Bay Power Plant the Company has contracted with the owners of the Olsen dock facilities until May 1, 1976 for the use of that dock to receive marine deliveries of fuel oil. PGandE owns and operates the piping between the dock and the power plant.

The kinds of services and facilities furnished at the off-site storage locations under contract with and for use by PGandE are:

Urich Oil Co. (UCO), Martinez

The Urich Oil Company is presently constructing four each 500,000 Bbl. floating roof storage tanks at their Martinez site for exclusive use by PGandE for the next 30 years. All four tanks will be outfitted with heating equipment that will allow for the storage of high pour oils. In addition, UCO is providing PGandE the use of marine wharf facilities capable of accommodating vessels up to 150,000 DWT in size properly lightered to a mass of 80,000 DWT at a design depth of 45 feet. The balance of the facilities at the terminal include:

1. Fire Protection Systems

A. Fixed foam system on the four tanks to protect against seal fires.

B. Portable foam nozzles and hoses for spill fires.

C. Fire water loop system around the tanks.

2. Tank farm piping including one 30-inch pipeline running onto the wharf complete with fuel oil pumps.

3. Tank heating system including a direct fired fuel oil heater with an output of 19 million BTU/Hr.

4. Wharf facilities 1200 feet offshore complete with pipe rack and roadway, breasting and mooring dolphins, loading/unloading arms, fire nozzles and hydrants, oil containment aqua fence and spill cleanup equipment, and communication equipment for emergency use.

5. Operation of the facilities will be on a 24-hour basis with security service provided by on duty personnel. Entire property fenced with the exception of the tressle access to the wharf.

ARCO Terminal, Richmond

ARCO has made available to PGandE under contract a total of four fixed roof fuel oil storage tanks each with a capacity of 50,000 barrels. Each tank is capable of receiving and storing high pour point fuels oils. The two steam generators necessary to provide steam heat to the tanks and steam traced piping are owned and operated by ARCO.

Also included in the storage contract is the use of a marine facility including the necessary traced piping between the tanks and the wharf.

The entire facility is fenced and normally operated 16 hours per day. During non-working hours a security service is provided.

The tanks are protected against fire by an automatic sprinkler system.

Bray Oil Co., Richmond

PGandE has a three-year contract with the Bray Oil Company for a total of 50,000 barrels of storage capacity at Bray's Santa Fe Channel location in Richmond. The following describes in detail the facilities available to PGandE under this contract.

1. Ten each 5,000 barrel fixed roof tanks each coiled and insulated. All piping into and out of the tanks is steam traced and insulated.

2. Truck and rail loading/unloading racks are provided capable of accommodating two tank trucks and eight jumbo rail tankcars, respectively, at one time.

3. Three steam generators each with a capacity of 600 H.P. provide necessary steam heat for tanks and piping.

4. Dock facilities to accommodate barges to load or offload fuel oil. There are a total of four 4-inch pipelines connecting the tanks to the dock. The dock is equipped with an aqua fence to provide oil containment in the event of a spill.

5. Fire protection includes automatic sprinklers on both the racks and docks. There are foam bottles and fire hoses located throughout the tank farm area.

6. Security is provided by facility personnel on a 24-hour basis.

A total quantity of oil purchased by PGandE in 1974 was 15.352 million barrels at a cost of 228.1 million dollars.

EXHIBIT "C"

3a. Identify any of your facilities not on State Lands Commission land, which you lease to other parties on the basis of throughput. Information should include name of lessee, area of lease, length and size of pipeline, terms, conditions and rental rates.

None

The Company does not have any facilities on or off of State Lands Commission lands which we lease to other parties on the basis of throughput.

EXHIBIT "D"

4a. Identify any of your facilities under State Lands Commission jurisdiction, which are operated for the convenience and purpose of supplying petroleum products to a governmental agency. Identify the agency, the amount supplied to it annually, the rate for delivery, and the State Lands Commission lease number.

None

4b. Identify any of your facilities not under State Lands Commission jurisdiction which are operated for the con-

venience and purpose of supplying petroleum products to a governmental agency. Identify the agency, the facility, the amount supplied, and the rate for delivery.

None

4c. Identify whether the rental rates for the above leases vary from the rate for other petroleum products delivered at the same facility. If it does vary, identify the special rental rate.

Not applicable since we have none of the abovementioned leases.

EXHIBIT "E"

5a. Identify any of your pipeline facilities that are regulated by the ICC and/or the CPUC.

A. All of our pipeline facilities are regulated by the CPUC. We have an interest in "Standard Pacific Gas Line Incorporated" which is regulated by the FPC.

5b. Forward a copy of the tariff for each pipeline route identified above.

A. Not applicable.

5c. Upon what basis was the transportation rate in the tariff computed? What services are included in this transportation rate?

A. Not applicable.

EXHIBIT "F"

6. Identify any effect that a throughput rental rate will have on your pipeline operations.

A. Every navigable stream or body of water of any dimension within our service area would become an effective barrier against expansion of our pipeline operations.

B. Measuring devices would have to be installed to accurately determine the quantity of product transported across state lands. Both capital costs and operation and maintenance costs would be increased.

C. Use of existing underground storage areas and construction of new facilities would be discouraged since their use would require payment of very large additional taxes. All areas considered appropriate for underground storage are surrounded by state lands.

D. Since all throughput rental charges will be passed on directly to the consumer and since it is our obligation to the consumer as a public utility to furnish a quality product at the lowest possible rate, the immediate effect would be that:

(1) A study would be made of our present pipeline routing to determine if we could eliminate some crossings of state owned lands.

(2) Feasibility studies would be initiated to determine whether pressures, pipe sizes, and other quantitative factors could be used to eliminate some existing crossings of state owned lands.

E. The development of new gas storage facilities would be curtailed because of the additional pipeline transportation costs and the risk of spot shortages in winter would increase.

F. The circuitous route necessary in many instances to avoid crossing state owned lands would add to the initial costs of pipeline materials and construction.

G. The vastly increased cost of gas will further encourage business and homeowners to switch to other, dirty fuel. The impact on the environment of such a switch can only be determined after detailed environmental studies are completed; but the effect is bound to be significant. Therefore, an Environmental Impact

Report as required by Public Resources Code No. 27000 et seq. should be prepared for this project as proposed.

H. The throughput formula would impose a continuing charge to the utility for the privilege of occupying SLC property. Under PGandE's CPUC authorized tariffs, PGandE is only obliged to extend their operating distribution lines to serve individual applicants on the basis that satisfactory permanent rights are available to them without cost or condemnation. Therefore, any rental formula for use of SLC property using individual load factor would tend to become "rate making" since continuing rental charges for land rights for PGandE facilities to serve an individual customer would be passed on in kind to that customer to avoid imposing a burden on PGandE's other rate payers.

EXHIBIT "G"

7. Will you authorize the release of pertinent data contained in agreements between your company and any other company, corporation, or individual regarding the sale and transportation of petroleum and related products?

A. All of our agreements regarding the sale and transportation of petroleum and related products are on file with the CPUC.

RESPONSE OF GETTY OIL COMPANY

July 15, 1975

State of California
State Lands Commission
State Lands Division
1807 13th Street
Sacramento, California 95814

Attention: Mr. Gary R. Horn, Land Agent

Your file: Ref. W5125.8

Gentlemen:

In response to your letter and questionnaire of June 19, 1975, we have compiled the following answers:

1. a. Gaviota Marine Terminal

Location: On U. S. Highway 101, approximately 30 miles north of Santa Barbara.

S.L.C. Lease No. 550.1

Annual Volume of Petroleum Handled—108,000 barrels (1974)

1. b. Gaviota Marine Terminal

Annual Volume of Petroleum Products Handled Projected Through 1980

Due to uncertainties of production and transportation operations in the area of this installation, volumes to be handled are unknown at this time.

1. c. Proposed New Installations On or Across State Lands, Next 5 years—*None.*

2. Leases for Which We Pay Rent Based on Thruput—*None.*

3. a. Our Facilities Not on State Lands Commission Lands Which We Lease to Others on Thruput Basis—*None.*

4. a. Our Facilities on State Lands Commission Lands Operated to Supply Petroleum Products to a Governmental Agency—*None.*

4. b. Our Facilities Not on State Lands Commission Lands Operated to Supply Petroleum Products to a Governmental Agency—*None.*

4. c. Variation of Rental Rates Charged in 4 a and 4 b (above With Those Charged to Others—*Not Applicable.*

5. a. Our Pipeline Facilities Regulated by ICC or CPUC—*None.*

5. b. Request for Copy of Tariff—*Not Applicable.*

5. c. Basis for Computation of Tariff and Services Included in Tariff Rate—*Not Applicable.*

6. Effect of Thruput Rental Rate on Pipeline Operations

The immediate effect will be to increase the cost of transporting materials and will cause a subsequent price increase to the consumer.

7. Release of Terms of Agreements

Getty Oil Company cannot and will not voluntarily authorize the release of any pertinent data contained in agreements between the company and other companies since such data are considered by Getty Oil Company and, in all probability, all other companies, to be confidential competitive information, the disclosure of which may have adverse consequence to either party to such agreements and tend to injure them in the conduct of their business.

A representative of this company will be available to discuss the above, or other topics that you may wish to discuss, at the proposed meeting the latter part of July. Should you desire additional information prior to that meeting, please contact Mr. R. A. Griffith of this office.

Very truly yours,

/s/ J. M. Tharp, Jr.
J. M. Tharp, Jr.
for E. H. Shuler

EHS:jy

RESPONSE OF UNION OIL COMPANY OF CALIFORNIA

July 16, 1975

Mr. Gary R. Horn
Land Agent
State of California
State Lands Division
1807 13th Street
Sacramento, California 95814

Dear Mr. Horn:

Commission Leasing Rental Based on "Throughput"

Reference is made to your letter dated June 19, 1975, regarding the above subject matter, and to the questions asked in Attachment B thereof. The following are our replies to the questions:

1a. *Annual Volume of Petroleum Products—Existing State Lands Commission Leases:* Union Oil Company of California has five non-extractive leases with the State Lands Commission involving the flow of petroleum and petroleum products. The annual volume of flow for each lease is as follows:

> *Lease No. PRC 600.1, San Francisco Refinery Wharf, San Pablo Bay at Carquinez Strait, Contra Costa County*: Current annual volume of crude oil received is approximately 13,000,000 barrels; current annual volume of petroleum product shipped out is approximately 17,000,000 barrels. Total approximate current annual volume is 30,000,000 barrels.
>
> *Lease No. PRC 602.1, Ventura Marine Terminal, Ventura County:* Current annual volume of crude oil delivered to ships is approximately 7,300,000 barrels.
>
> *Lease No. PRC 3116.1, Pipelines Serving Platform Eva, Huntington Beach, Santa Monica Bay, Orange County:* Current annual volume transported to shore

is approximately 1,150,000 barrels of crude oil and 330,000 MCF of natural gas.

Lease No. PRC 4017.1, Pipelines Serving Federal Platforms A, B and Hillhouse, Dos Cuadras Field, Santa Barbara Channel, Santa Barbara County: Current annual volume transported to shore is approximately 14,000,000 barrels of crude oil and 4,940,000 MCF of natural gas.

Lease No. PRC 4849.1, Point Conception Barge Loading Facility, Cojo Bay, Santa Barbara County: Current annual volume of crude oil transported to barges is approximately 103,000 barrels.

1b. *Projections Through 1980:* It is not possible for Union to make firm projections of such volumes.

1c. *Plans For Additional Facilities During Next Five Years:* There are no firm plans for additional facilities during the next five years.

2. *Existing Leases Involving Throughput Rentals:* No throughput rentals are paid by Union for the use of any tide and submerged lands or any other lands in the State of California comparable to those leased by Union from the State Lands Commission. Throughput (wharfage) fees have been paid to the Ports of Los Angeles, San Diego, San Francisco, Stockton and Redwood City for the use of preferentially assigned wharves. These wharves have been constructed, and are owned and maintained by the Ports and are located within the confines of protected harbors where the port authorities have provided such amenities as breakwaters, dredged channels, surface transportation corridors and related facilities, and maintenance, dredging, fire protection and security, all for the benefit of the shippers. The effective current average wharfage paid by Union is $.013 per barrel of petroleum and petroleum products loaded to and from the wharves.

One unique lease has been granted to Union by the Port San Luis Harbor District, where Union owns and maintains only the wharf which it uses, within an enclosed breakwater-protected harbor. The wharf and adjacent mooring buoys are located within a 37-acre parcel of submerged land leased by the Port District to Union. The primary lease term is 25 years, from October 1, 1964, with term renewal options covering an additional 25 years. Annual rental is based on the volume of liquid petroleum and petroleum products loaded to and from the wharf, at the current rate of \$.00105 per barrel for the first 3.5 million barrels per year, and \$.000525 per barrel for the volume exceeding 3.5 million barrels. The current minimum annual rental is \$2,999.00. These charges are adjusted each five years by ratios corresponding to changes in the level of the U.S.B.L.S. National Wholesale Price Index, all commodities.

3a. *Land Leases to Others Involving Throughput Rentals:* None

4a. *Facilities Maintained for Governmental Agencies—SLC Lands:* None

4b. *Facilities Maintained for Governmental Agencies—Non-SLC Lands:* None

5a. 5b. 5c. *California Pipeline Facilities Regulated by the ICC and/or the CPUC:* None

6. *Effect of a Throughput Rental Rate on Union's Pipeline Operations:* The immediate effect of a throughput rental on Union's pipeline operations would likely be limited to an increase in pipeline transportation costs corresponding to the magnitude of the rental. Far greater long-run effects, on the other hand, could result because of the precedent which the throughput rental formula could establish with other parties from whom pipeline right of way privileges must be obtained. To the extent that the exces-

sive burden of such charges would continue to grow, a dislocation in the entire system of petroleum and petroleum products transportation could well result. An in-depth dissertation on the prospective economic and environmental effects of such a dislocation is beyond the scope of this type of letter.

7. *Pertinent Data Contained in Petroleum and Related Product Sale and Transportation Agreements:* Absent a more precise delineation of the particular type of data desired, we will reply "No" to this question.

It is hoped the foregoing information will assist you in your investigation.

Very truly yours,

/s/ W. H. Cotrel
W. H. Cotrel
Manager Property Services

WHC:jt

RESPONSE OF SAN DIEGO GAS & ELECTRIC COMPANY

July 17, 1975

Mr. Gary R. Horn, Land Agent
State of California
State Lands Commission
State Lands Division
1807 13th Street
Sacramento, California 95814

SUBJECT: FILE REFERENCE W5125.8
COMMISSION LEASING RENTAL
BASED ON "THROUGHPUT"

Dear Mr. Horn:

Your letter dated June 19, 1975 requested San Diego Gas & Electric Company provide information needed for a more detailed investigation into a Commission proposal to base rental rates for pipelines which cross State-owned land on a "throughput" charge.

The following is the Company's response to Attachment "B" of the above letter:

1a. (A) *Encina Offshore Fuel Oil Terminal Berthing and Petroleum Transfer Facility*

Location: Pacific Ocean off the coast of Carlsbad, California.

Lease number: P.R.C. 791.1 (File W20335).

Annual Volume: 3,815,934 bbls (1974).

(B) *Gas Pipelines Crossing San Diego Bay*

Location: San Diego Bay between the cities of San Diego and Coronado.

Lease number: P.R.C. 4799.1 (File W20356).

Annual Volume (est.): 776,329 MCF (1974).

1b. (A) *Encina Mooring Facility*

1975	8,939,282 BBLS
1976	11,999,000 BBLS
1977	14,231,000 BBLS
1978	16,148,000 BBLS
1979	17,150,000 BBLS
1980	17,780,000 BBLS

(B) *San Diego Bay Crossing*

1975	803,500 MCF
1976	831,623 MCF
1977	860,730 MCF
1978	890,855 MCF
1979	922,035 MCF
1980	954,306 MCF

1c. We have no plans for the placement of *additional* pipeline facilities across land under State Lands Commission jurisdiction in the next five years. The Army Corps of Engineers is planning to dredge San Diego Bay starting in August, 1975. This action may cause us to repair or replace existing natural gas pipelines now traversing the bay.

2. Because of the inadequate depth of San Diego Bay, which can only accommodate barges and small or partially laden tankers, we are forced to periodically transport fuel oil from our Encina facility at Carlsbad to the San Diego Unified Port District's 24th Street Pier in National City, California.

The Port's docking and wharfage facilities are used in conjunction with an easement which the Company holds from the District, allowing for the construction, operation and maintenance of a pipeline on Port District property from the 24th Street Pier, approximately 1,500 feet easterly to land leased from the District on a cost per square foot per year basis and used for fuel oil storage.

The San Diego Unified Port District utilizes a tariff schedule for the use of their facilities, a copy of which is enclosed. We presently pay a "wharfage" tariff of ¾¢ per

bbl of petroleum products off loaded from the pier, and a "dockage" charge based on the length of the vessel berthed or moored and its duration in port. The use of the facility constitutes consent by the user of all the terms, conditions, rules, regulations, rates and charges set forth therein.

The San Diego Gas & Electric Company has a *Fuel Oil Storage Agreement* with Waterfront Service, Inc., allowing for the storage of up to 90,000 bbls of fuel oil at their facility located at the San Diego Unified Port District's Tenth Avenue Terminal in San Diego, California. This facility is only used on an "as needed" basis. The Company pays $7,150 per month for the privilege of having 90,000 bbls of storage capacity available, plus 22.6¢ per bbl when fuel oil is actually stored at, or pumped through, their facility.

3a. None.

4a. None.

4b. None.

4c. Not applicable.

5a. All of our natural gas pipelines are regulated by the California Public Utilities Commission (CPUC) under General Order 112-C.

5b. Not applicable.

5c. Not applicable.

6. (A) *Encina Mooring Facility*—At this location, the total estimated annual costs for the proposed throughput charge (based on 1.6¢ per bbl) are as follows:

1975	$143,028
1976	$191,984
1977	$227,696
1978	$258,368
1979	$274,400
1980	$284,480

Since we are currently paying $13,662 annually with provision for periodic adjustment, the impact of this proposal would be the difference between the present rental scheme and the proposed throughput cost.

(B) *San Diego Bay Crossing*—At this location, the total costs for the proposed throughput charge (based on .9¢ per 6 MCF) are as follows:

1975	$1,205
1976	$1,247
1977	$1,291
1978	$1,336
1979	$1,383
1980	$1,431

Similarly, we are currently paying $754.03 annually to the State Lands Commission for two strips of tide and submerged land for public utility purposes. The impact of this proposal would be the difference between the present rental scheme and the proposed throughput cost.

Note the above increased rental costs would be imposed without any increase in services to the lessee or other value given by the State. This will increase operating costs by escalating the cost at each stage of petroleum processing as it crosses lands under State Lands Commission jurisdiction all the way from the wellhead to the final user.

C. M. Laffoon's April 25, 1975 letter to the Commission contains information which is pertinent to any further investigation of the "throughput" question. A copy is enclosed for incorporation into your study.

7. This question appears to be a request for a broad waiver by this firm of any privacy with respect to petroleum purchase, sale and transportation operations. Such a request seems to be inappropriate. Certain competitive aspects of these transactions are not "pertinent" to state land leasing. This is particularly true for a utility, which must in many cases import its oil from out of state to meet APCO mandated low-sulphur fuel requirements. Further-

more, the requested data would appear to be beyond the jurisdiction of the State Lands Commission. Inquiries of this type are performed by the CPUC and State Energy Commission pursuant to their regulatory functions. Full disclosure of the requested material is routinely made to those agencies. Lastly, even disclosures made to agencies with appropriate jurisdiction are made to the understanding that certain price and other trade secrets will not be made public. We have always maintained that, in order to protect our bargaining position in this competitive society, trade secrets on each phase of production, sale, storage and transportation of petroleum and related products must not be publicized. To do otherwise would certainly cause the cost of such commodities to rise and consequently require increases in gas and electric rates.

Much of the information requested is on file with the CPUC and is open to the public. However, to the extent that we have requested both the CPUC and State Energy Commission not to disclose price and certain other data on this matter, it would be inappropriate for us to release that data to the State Lands Commission or staff.

I hope the above information will be beneficial to your investigation and look forward to participating in the open discussion to be held with other utility companies, scheduled for July 22, 1975.

Sincerely,

/s/ R. D. Richardson, Supervisor
Governmental Right of Way

RESPONSE OF EXXON PIPELINE COMPANY OF CALIFORNIA

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PMS GARY R HORN, LAND AGENT, DLR
STATE LANDS DIVISION, STATE LAND COMMISSION, STATE OF CALIFORNIA, 1807 13TH ST
SACRAMENTO CA 95814

SINCE EXXON PIPELINE COMPANY OF CALIFORNIA PRESENTLY NEITHER OWNS NOR OPERATES ANY PIPELINE IN THE STATE OF CALIFORNIA OR ELSEWHERE, IT HAS NOT RESPONDED TO THE LIST OF QUESTIONS SUBMITTED WITH YOUR LETTER OF JUNE 19, 1975 AND IS NOT SENDING A REPRESENTATIVE TO THE MEETING CALLED BY YOU TO BE HELD AT 9:30 AM ON JULY 23, 1975 IN LONG BEACH

EXXON PIPELINE COMPANY OF CALIFORNIA MAY HEREAFTER OWN OR OPERATE PIPELINES ACROSS STATE-OWNED LANDS IN THE STATE OF CALIFORNIA AND FEELS VERY STRONGLY THAT ANY CONSIDERATION PAID TO THE STATE FOR THE NECESSARY EASEMENT SHOULD BE RELATED TO THE VALUE OF THE LAND AND SHOULD BE COMPUTED IN THE SAME MANNER AS THE CONSIDERATION PAID BY THE STATE AND/OR ITS POLITICAL SUBDIVISIONS FOR SIMILAR EASEMENT RIGHTS ACROSS PRIVATELY-OWNED LANDS ACROSS WHICH ITS/THERE PIPELINES ARE LAID A CONSIDERATION ARRIVED AT IN ANY OTHER WAY WOULD NECESSARILY BE ARBITRARY AND PROBABLY CONFISCATORY AND

UNCONSTITUTIONAL SINCE IT WOULD HAVE NO RELEVANCE TO THE RIGHTS GRANTED. IN CONCLUSION, FOR THE ABOVE REASONS YOU ARE URGED TO RECOMMEND THE ADOPTION OF RENTAL RATES RELATED TO THE VALUE OF THE LAND AFFECTED AS IS THE PRACTICE FOLLOWED THROUGHOUT THE UNITED STATES.

U J LEGRANGE, PRESIDENT, EXXON PIPELINE COMPANY OF CALIFORNIA

**RESPONSE OF
STANDARD OIL COMPANY OF CALIFORNIA,
WESTERN OPERATIONS, INC., and
STANDARD PIPELINE COMPANY**

July 21, 1975

Mr. Gary R. Horn
California State Lands Division
1807—13th Street
Sacramento, CA 95814

Dear Mr. Horn:

This is in reply to your letters of June 19, 1975, to Mr. E. J. Taaffe, Standard Oil Company of California, W.O.I., and to Standard Pipe Line Company.

Our responses to the questions in your Attachment B are enclosed herewith. I have assumed that your inquiries apply only to facilities and leases within the State of California.

I hope the information provided will be helpful.

Yours very truly,

/s/ J. T. Brewster

STANDARD OIL COMPANY OF CALIFORNIA, W.O.I.
and
STANDARD PIPE LINE COMPANY

Answers to Questions, Attachment B, State Lands Division Letter of June 19, 1975

1 a, b. Tabulation of State Lands Commission leases is attached. The volumes shown are approximate for the current period, except for the refinery related leases, PRC Nos. 236.1, 139.1, 4497.1, 2785.1, and 4707.1. The volumes for these facilities are forecast for the year 1977. We do not have reliable forecasts beyond 1977 due to the many uncertainties affecting the petroleum industry.

1 c. Standard has no present plans for additional facilities that would be located on or cross State lands within the next five years. Our Estero Bay Deepwater Terminal Project has been indefinitely postponed.

2. Standard has no leases for which rent is paid on the basis of throughput except for some service stations for which a gallonage charge is paid in addition to a base rental. This type of arrangement is normally made to fit special circumstances, such as at locations where business is highly seasonal. We do pay wharfage charges to California ports in accordance with the provisions of their tariffs.

3 a. We have certain agreements with others whereby they may use surplus pipeline capacity. Charges are made on a per-barrel basis. We also have certain exchange agreements whereby oil is received from others into a pipeline on exchange and oil is exchanged back to the originator at another location that may or may not be on the same pipeline. A differential is charged in such cases on a per-barrel basis.

4 a. None.

4 b, c. Occasionally products are sold to governmental agencies that may have been transported through pipelines or marine terminals. No rental charge is made. The transportation, of course, is considered in the determination of the selling price.

5 a, b. Standard Pipe Line Company is a common-carrier regulated by the California Public Utilities Commission. A copy of its tariff is attached.

5 c. The services included in the transportation rate are stated in the tariff. The present rate levels were established by order of the California Public Utilities Commission in 1964 and undoubtedly cover direct and indirect expenses, taxes, and an allowance for return on investment.

6. The throughput rates proposed by your office would increase the transportation cost of our crude oil, refined products, and natural gas by an estimated $3.5 million per year. The aggregate rentals would be approximately twenty-five times as great as the present charges. In the case of our products pipeline from Richmond Refinery to Sacramento (Leases PRC Nos. 3281.1, 3280.1, 3278.1, 3277.1, and 3279.1), the proposed throughput charges would approximately double the cost of transporting products to Sacramento.

7. No. The data contains information that is confidential and proprietary. A blanket authorization for its disclosure could affect the company competitively. Of course, we will consider any specific inquiries that may be made.

STANDARD OIL COMPANY OF CALIFORNIA
STANDARD PIPE LINE COMPANY
CALIFORNIA STATE LANDS COMMISSION LEASES

	Commodity	Approximate Volume	Remarks
PRC #2478.1 Estero Bay Marine Terminal, Morro Bay, California	Crude Oil	60,000 BPD	
PRC #236.1 Richmond Long Wharf and PRC #139.1 Point Orient Wharf, Richmond, California	Crude & Products:		
	Inbound	258,000 BPD	Estimated for 1977
	Outbound	73,000 BPD	Estimated for 1977
PRC #4497.1, #2785.1, #4707.1, Submarine Pipeline Terminals, El Segundo, California	Crude & Products:		
	Inbound	217,000 BPD	Estimated for 1977
	Outbound	19,000 BPD	Estimated for 1977
PRC #3394.1 Pipelines from Island Esther, San Pedro Bay, California	Crude Oil	4,040 BPD	
PRC #4270.1 Pipeline Crossings, Roaring River Slough and Grizzly Slough, Solano County, California	Natural Gas	5,400 MCFD	
	Gas Condensate	16 BPD	
PRC #3277.1, #3278.1, #3279.1, #3280.1, #3281.1 Pipeline Crossings of Montezuma Slough, Honker Bay, Sacramento River, Grizzly Slough, Roaring River Slough Richmond-Sacramento Products Pipeline	Products	9,000 BPD	
PRC #3978.1 Suisun Bay Gas and Condensate Pipelines	Gas	29,000 MCFD	Joint lease with Shell
	Condensate	28 BPD	Joint lease with Shell
PRC #4303.1 Ryer Island Gas and Condensate Pipelines, Suisun Bay		12,000 MCFD	Joint lease with Shell
		12 BPD	Joint lease with Shell

	Commodity	Approximate Volume	Remarks
PRC #3519.1 Waste Water Pipelines, Huntington Beach, California	Water		
PRC #2448.1, #2449.1 Crude & Products Terminal, Carpinteria, California	Crude Products	5,000 BPD 2,400 BPD	
PRC #4117.1 Scanlon—Richmond, California	None		No commodity movements
PRC #654.1 Petroleum Products Bulk Plant, Napa, California	None		No products move over State lands

NOTE: Above volumes are current unless noted otherwise.

STANDARD PIPE LINE COMPANY
SAN FRANCISCO, CALIFORNIA

PIPE LINE TARIFF NO. S-2

Naming Rates, Rules and Regulations for Transportation of Crude Petroleum.

Schedule of Rates

From	To	Rates per Barrel of 42 U.S. Gallons
KETTLEMAN SYSTEM:		
Kettleman Station	Estero Terminal (Ship's Rail)	6.9¢
Kettleman Station	Mile Post Fifteen and all connections between M.P. 15 and Kettleman Station	1.4¢
Kettleman Station	Lines of Other Companies at or adjacent to Station	1.0¢
Shandon Station	Estero Terminal (Ship's Rail)	4.2¢
Shandon Station	Kettleman Station	3.6¢
Mile Post Fifteen and all connections between M.P. 15 and Kettleman Station**	Kettleman Station	0.5¢
MIDWAY SYSTEM:		
Midway Station, or 27-G Station*	Strand	2.3¢
Midway Station, or 27-G Station	Lines of Other Companies at or adjacent to Station	1.0¢

*Same rate applies when oil is received by Carrier at Buena Vista Tank Farm.

**Pumping Service provided by Shipper.

GATHERING CHARGES

Where gathering service is performed a gathering charge of 2¢/bbl. of 42 U.S. gallons will be made, which includes delivery through the established lines and connections of carrier into containers or other facilities designated by the

shipper in the particular field. On through shipments to destination this charge will be in addition to the rates shown above.

Subject to the rules and regulations following, and to change without notice, except as otherwise provided by law.

RULES AND REGULATIONS

1. APPLICABILITY OF RATES

The transportation rates apply to the transportation of crude petroleum ("oil") of not less than 20 degrees A.P.I. gravity through the established Kettleman-Estero trunk line, and of not less than 14 degrees A.P.I. gravity through the established Midway-Strand trunk line, of the carrier within the State of California between the receiving and delivery points specified in the Tariff.

2. CARRIER'S RIGHT TO REFUSE CERTAIN OILS FOR CARRIAGE

Carrier may refuse to gather or carry any oil except good, marketable oil of the gravities above specified, properly settled and containing not more than 3 per cent of basic sediment, water, and other impurities, as ascertained by either the "Gasoline Test" or "Benzol Test" (A.S.T.M. method D-96, latest issue) at the option of the carrier. The same method of ascertaining the amount of water, sediment and other impurities will be used in the delivery as in the receipt of oil. Oil having qualities injurious to, or materially depreciating the value of, other oil in contact therewith, will not be received. If the oil tendered for transportation differs materially in character from that usually produced in the field and being transported therefrom by the carrier, it will be transported only upon such further terms and conditions that the carrier may prescribe.

The carrier may reject oil which is involved in litigation, or the ownership of which may be in dispute, or which may be encumbered by lien or charge of any kind, or any part

of which may not have been produced in conformity with State and/or Federal laws, including laws prohibiting waste, and/or the rules and regulations of any regulatory body in recognized control. The carrier may require that the shipper evidence his compliance with applicable laws and his perfect and unencumbered title, and/or post an indemnity bond to protect the carrier against all loss.

3. CARRIER NOT LIABLE FOR MIXING OF OILS IN TRANSIT

All oil transported will be subject to such consequences of mixing with other oil as are incident to the usual pipe line transportation.

Transportation will be effected with reasonable diligence, considering the quality of the oil, the distance of transportation, and other material elements.

4. DELIVERIES

Deliveries will be made, at the option of the carrier, in lots of not less than 40,000 barrels. Arrangements for date and time deliveries shall be made with carrier at least 5 days in advance. The carrier may refuse to accept oil for transportation unless satisfactory evidence is furnished that the shipper has made provision for prompt receipt thereof at destination. Upon failure on the part of the shipper to make such arrangements, or to take delivery as agreed, the carrier may, upon 24-hours' notice, require the shipper to take delivery of any or all of his oil in the carrier's system.

5. DEMURRAGE

Demurrage will be charged at the rate of 1/10 of 1 cent per barrel per day of 24 hours or fractional part thereof for any oil in the carrier's possession for more than 10 days, and at the rate of 3/10 of 1 cent per barrel for any oil in the carrier's possession for more than 30 days. Demurrage will be waived for such period of delay caused by carrier's inability to make delivery at the time proposed, but carrier will not in any way be liable for costs or loss incident to delay from any cause.

6. DEDUCTION FOR SHRINKAGE IN TRANSIT

Oil tendered for shipment must be gauged and tested by a representative of the carrier, and will be considered accepted for transportation when it is received into the facilities of the carrier. Transportation will be charged on the net oil received. Quantities will be computed from regularly compiled tank tables, and corrected to 60 degrees Fahrenheit in accordance with Table 7 of ASTM-IP Petroleum Measurement Tables, ASTM D-1250, in its latest revision, and deduction will be made for the full percentage of basic sediment, water and other impurities. The quantity of oil deliverable to the shipper at destination will be

From	To	Loss Allowance
Kettleman Station	Estero Terminal (Ship's Rail)	1.0%
Kettleman Station	Mile Post Fifteen, and all connections between M.P. 15 and Kettleman Station	0.5%
Kettleman Station	Lines of Other Companies at or adjacent to Station	0.5%**
Shandon Station	Estero Terminal (Ship's Rail)	1.0%
Shandon Station	Estero Terminal (Shipper's Tankage)	0.5%
Shandon Station	Kettleman Station	1.0%*
Mile Post Fifteen	Kettleman Station	0.5%*
Midway Station, or 27-G Station	Strand	1.0%
Midway Station, or 27-G Station	Lines of Other Companies at or adjacent to Station	0.5%**

Where gathering service is performed, loss allowance is 1%

*This constitutes full allowance in event the oil is delivered subsequently to lines of Other Companies at Kettleman Station.

**Does not apply if shipper takes delivery on basis of tank gauges of delivery tank at Station; in this event, loss allowance shall be "None".

the net oil received as computed above, less an allowance to be deducted by the carrier to cover evaporation and shrinkage during transportation, according to the following schedule:

7. CARRIER'S LIEN FOR CHARGES

The carrier shall have a lien on all oil received for transportation to secure the payment of all charges, including demurrage, and may withhold delivery of oil until such charges are paid. If such charges remain unpaid 10 days after demand has been made for payment, or if after due notice, the shipper shall fail to take oil at the point of destination, oil may be sold by the carrier or its representative at public auction at the office of the carrier in San Francisco, after publication for five successive days of notice in a newspaper published in said city of the time and place of sale and the quantity of oil to be sold. The proceeds of sale shall be applied to the payment of the charges of the carrier, and the balance, if any, shall be held for whosoever may be lawfully entitled thereto.

8. CARRIER'S LIABILITY FOR LOSS

Carrier shall not be liable for the results of fire, storm, flood, or act of God, strikes, riots, insurrection, rebellion, war, or act of the public enemy, quarantine or authority of law or any order, requisition or necessity of the government of the United States in time of war, or from any cause whatsoever, except its own direct negligence. In case of loss from any of such causes, other than the negligence of the carrier, after oil has been received for transportation and before the same has been delivered to the shipper, the shipper shall bear a loss in such proportion as the amount of his shipment is to all of the oil in the custody of the carrier at the time of such loss, and the shipper shall be entitled to have delivered only such portion of his shipment as may remain after a deduction of his due propor-

tion of such loss; except that oil in the carrier's tanks being segregated or accumulated for, and/or held subject to removal by the shipper shall be so held at shipper's sole risk.

9. CLAIMS FOR LOSS, DAMAGE, ETC.

Claims for loss, damage, or delay in connection with shipments must be made to the carrier in writing, fully substantiated with satisfactory evidence, within 60 days after loss or damage, or within 91 days after delay in delivery. Unless claims are so made and filed, the carrier shall be wholly released and discharged therefrom and shall not be liable therefor.

10. PRIORITY

Tenders for transportation shall become operative in the order in which they shall have been received, subject to the limitation that where a shipper enters into a contract with carrier to offer carrier for transportation a minimum daily quantity of oil for period of one year or longer, such shipper shall have a prior right to the transportation of said full minimum amount for the term of said contract; and tenders by other shippers will be transported in the remaining capacity ratably in proportion to their firm tenders. Shippers having contract rights to transportation of minimum daily quantities shall, for quantities tendered by them in excess of said minimum daily quantities, be considered as "other shippers."

RESPONSE OF ATLANTIC RICHFIELD COMPANY

California—State Lands Commission—Regulations
Your: W 5125.8

July 21, 1975

State of California
State Lands Division
1807 Thirteenth Street
Sacramento, California 90958

Attention: Mr. Gary R. Horn, Land Agent

Gentlemen:

In reply to the letter of Mr. Gary R. Horn of June 19, 1975, please be advised that we have considered your request to respond to the list of questions attached to Mr. Horn's letter. We find that many of the questions call for information already contained in the files of the State Lands Commission. In addition, a substantial number of the questions call for information which is either an inappropriate inquiry or requires the divulgence of information confidential and proprietary to Atlantic Richfield Company.

To be more specific, we believe that the State Lands Commission already has all information requested by Question 1a.

Questions 1b, 1c and 2 call for information that is not appropriate for any determination as to the validity of a rental charge based on throughput.

As to Question 3a, we do not believe there is an applicable relationship or a relevant comparison between a facility constructed with substantial capital expenditure by the owner and leased on a throughput basis, and unimproved land leased on such a basis.

As to Questions 4a, 4b and 4c, we fail to see the applicability of this to an investigation of a throughput rental charge.

As to Questions 5a, 5b and 5c, Atlantic Richfield has no pipelines in California that are regulated by the ICC or the CPUC.

As to Question 7, we fail to see the applicability of this question as to an investigation of rental on a throughput basis and we cannot, without a breach of confidentiality, release any such data.

Question 6 gets to the heart of the matter. A throughput rental will have the effect of substantially increasing costs in operating the pipeline and, ultimately, costs which the consumer must pay. A throughput formula has no logical basis in fact or in principle. It is purely arbitrary and capricious.

The throughput does not create a burden upon the land. Atlantic Richfield does and is prepared to pay a fair rental based upon an adequate and appropriate determination of the value of the land leased. However, this has little to do with the value of the commodity transported over the land. Our concern is not only the amount of the charge set up in the proposed schedules, but the right to exact any such charge itself. If the principle espoused by the State Lands Commission were adhered to by all cities and towns through which a pipeline in the course of its journey must travel, it is certainly within the realm of possibility, and indeed probability, that the cost per barrel in transporting oil would be astronomical. As stated, this would ultimately have to be absorbed by the consumer. The State Lands Commission, in advocating a rental based on throughput, exacerbates the situation in the supply of energy to the people of California.

We trust that common sense and fairness will prevail over any inclination to realize unwarranted economic gains for the State at the expense of the lessees and the consumers of California.

Yours very truly,

/s/ H. P. SMOLICH
H. P. Smolich—Manager
Right of Way and Land

RESPONSE OF PHILLIPS PETROLEUM COMPANY

July 21, 1975

State Lands Commission
Thru Put Rental
Your file: W-5125.8

Mr. Gary Horn
Land Agent
State Lands Division
1807 13th Street
Sacramento, California 95814

Gentlemen:

Attached is a listing of Phillips Petroleum Companys' answers to questions proposed by Attachment B of your letter of June 19, 1975.

/s/ J. R. MORLEY
J. R. Morley
Regional Manager

JRM:rl
Attachment

Answer to Attachment B
State Land's Letter of June 19, 1975

1 A

Location	State Lands Use #	Annual Volume of Product Wharves
Amorco Wharf .... Martinez, California	3453.1	22,346,000 BBls.
Avon Wharf .... Near Martinez, California	3454.1	13,026,000 BBLS.
Port Costa Wharf ...... Port Costa, California	2869.1	Not In Use At This Time
Sacramento Wharf ..... Sacramento, California	153.1 File: W-20299	Not In Use At This Time
Diablo Wharf .... Pittsburgh	2757.1	816,885 tons of bulk cargo (coke & caustic soda)
	Pipelines	
Pacheco Creek Crossing ..	331.1 File: W-20395	28,946,000 BBLS.
Ventura County La Conchita Shore ..... Site to Federal Offshore	3914.1	1,799,815 BBLS. 17,958 MCF Gas

1.B—No change
1.C—No plans for additional facilities
2. —None
3.A—None
4.A—None
4.B—None
4.C—None
5.A—None
5.B—N/A
5.C—N/A
6. —1. Throughput rental rates increasing rentals would make present operations less and less economical requiring examination and use of alternate ways of movement of product. For example:
(a) Throughput rentals could cause a switch in the operation of federal offshore production into pipelines to production directly into ships moored outside state waters.
(b) Throughput rental could cause an increase in use of other modes of transportation such as by railway tank car and truck with the resultant increases in hazards of spills and increased environmental problems.

2. Throughput rental rates would unreasonably interfere with movement of products (an unreasonable burden on commerce).

3. Throughput rental rates would be detrimental not only to Lessee but also to consumer purchasers of transported product.

4. Throughput rental rates imposed by the State would be illegal.

7. —No

RESPONSE OF SOUTHERN PACIFIC PIPE LINES

July 21, 1975

Mr. Gary P. Horn
Land Agent
California State Lands Commission
1807 - 13th Street
Sacramento, California 95814

Dear Mr. Horn:

Please refer to your letter of June 19, 1975 wherein you have requested that certain information be forwarded to your office relative to this company's State Land leases and in conjunction with the "throughput" rental policy currently under discussion.

Outlined below, and attached hereto, are the answers to the questions outlined in "Attachment B" of your June 19, 1975 letter.

(1a, 1b & 1c) Please refer to Chart 1 attached, for information regarding the geographic location, lease number, description, current and projected throughput of products across each of this company's State Land leases. This is a current listing and we have no present plans for additional facilities to be located on or across lands under State Lands Commission jurisdiction within the next five years. The majority of SPPL's pipelines are multi-purpose in that they supply both commercial and military facilities. You will note that we have not shown the current and projected annual throughput for lines supplying only one military facility, nor have we broken out separately the military volumes handled by our multi-products lines. With the permission of U. S. Defense Fuel Supply, Washington, D.C., we will furnish your office with these figures.

(2, 3a) Not applicable.

(4a) Please refer to Chart 1 for requested information concerning SPPL's facilities under State Lands Commission jurisdiction, which are operated for the convenience and purpose of supplying petroleum products to governmental agencies, excluding volumes as noted above.

(4b) Please refer to Chart 2 for requested information regarding SPPL facilities, *not* under State Lands Commission jurisdiction, which operate for the purpose of supplying products to governmental agencies, excluding volumes as noted above.

(4c) The rate component for transportation for governmental agencies (military) and commercial shippers are the same to common points; however, total rates to final destination for movement of military products are usually higher due to additional services and facilities which are provided to the government, such as special lateral pipelines, storage tank rental, product quality control (filtration, laboratory equipment, chemists and buildings) and loading into trucks and trailers at certain locations.

(5a) The entire SPPL system is regulated by the ICC. In addition, commercial intrastate movements, as identified by the attached tariffs quotations, are regulated by the PUC.

(5b) Attached are copies of SPPL Local Pipeline Tariff #1, SPPL Local Pipeline Tariff #11-C, SPPL Local Pipeline Tariff #12, SPPL Section 530 (CPUC) Quotation #40 Amendment #1, SPPL Section 22 (ICC) Quotation #20 Amendment #1, SDPC with SPPL Local and Joint Pipeline Tariff #1-C, SDPC with SPPL Section 530 (CPUC) Quotation #10, SPPL with Calnev Pipeline Company Joint Pipeline Tariff #5-J, SPPL with Calnev Pipeline Company Section 530 (CPUC) Quotation #1 Amendment #4 and SPPL with Calnev Pipeline Company Section 22 (ICC) Quotation #1 Amendment #5.

(5c) SPPL transportation rates are computed for complete service between certain points identified in the tariffs and quotations attached. SPPL is a common carrier and public utility and owns no product. During transportation, product is in SPPL's care, custody and control.

In determining the levels of transportation rates, there are numerous factors taken into consideration, including; (1) a rate level low enough to move the traffic in competition with other modes of transportation, (2) reimbursement of all operating expenses, such as power, salaries and wages, maintenance, labor, ad valorem taxes, depreciation, supplies, rentals, fuel, outside services, employee benefits, overhead, etc.; (3) a reasonable and fair return on investment and (4) amortization of investment.

Services included in the transportation rates are: filtration, quality control, intransit storage, pumping, measurement, scheduling and delivery guarantee.

SPPL is a common carrier, filing tariffs with the Interstate Commerce Commission for interstate movements. For movements in California, SPPL is a public utility and common carrier, filing intrastate tariffs with the California Public Utility Commission.

(6) The proposed "throughput" charges would increase SPPL's current *annual* rental payments to California State Lands Commission by 12,240%. With these higher costs there are two alternatives: (1) take appropriate steps to discontinue service or (2) pass the increased costs to the shippers and ultimately to the public in general.

The proposed increased charges would place common carrier pipelines at a competitive disadvantage with other modes of transportation, such as trucks and barges. The result would be a tendency to shift transportation of products now moved by pipeline to these other modes, which

from the standpoint of the environment, safety and cost, are less desirable means of transportation.

The proposed charges would result in costs which would be completely out of proportion to other pipeline operating expenses, such as power, maintenance, labor and ad valorem taxes.

Furthermore, as we understand it, the proposed charges would be cumulative since it is possible that one barrel of petroleum product may pass over several State Lands Commission's leases from origin to destination. For example, if the increased charges become effective, product originating at a refinery on the north side of Carquinez Strait, would traverse two State Lands Commission's leases before reaching destination at Brisbane or the San Francisco International Airport, and incur lease charges of 1.2¢ per barrel across Carquinez Strait and 2.0¢ per barrel for San Francisco Bay, a total of 3.2¢ per barrel for this movement of 66 miles, or 70 percent of SPPL's present published tariff of 4.6¢ per barrel.

The State of California under the proposed charges would receive 6,000% more for the two leases than it receives today.

SPPL's total rental payment for the year 1974; including leases, franchises, licenses, etc. for all pipeline, terminal and other facilities, was $1,303,466.00. Should the "throughput" charge be approved, SPPL's annual rental payment for only four of its State Lands Commission leases would be approximately $1,318,000.00. It is easy to see the vast effect of the proposed program.

The increased charges based on "throughput" would establish a precedent with other lessors and franchise grantors along our 2,500 mile system, thus resulting in a dramatic increase in overall lease, franchise and other annual payments.

(7) Since SPPL is a common carrier and public utility, it does not have agreements with other companies, corporations, or individuals, regarding the sale and transportation of petroleum and related products.

Should further information be desired, please advise.

Sincerely yours,

/s/ B. K. Smith
B. K. Smith

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S.P.P.L. PIPELINE CROSSINGS OF CALIFORNIA STATE LANDS

(Questions 1a & 1b)

Line Sec. #	Lease	Size Line	From	To	Crossing Location	Curre Annu Thrup (1,000 b
2	1552.1	12"	Niland	Yuma	Colorado River, Imperial Co.	17,40
9	1876.1	10"	Brentwood	Stockton	Middle Riv., San Joaquin Co.	12,50
9	1875.1	10"	Brentwood	Stockton	Old River, Contra Costa-San Joaquin Co.'s	12,50
9	1877.1	10"	Stockton	Bradshaw	San Joaquin Riv. San Joaquin Co.	4,70
9	1862.1	10"	Sacramento	Roseville	American Riv.	14,10
56	1862.1	4"	Bradshaw	McClellan AFB	American Riv.	*
56	1862.1	3"	Bradshaw	McClellan AFB	American Riv.	*
9	1859.1	10"	Stockton	Bradshaw	Mokelumne Riv. San Joaquin Co.	4,70
8	1890.1	8"	Richmond	Concord	Walnut Creek Contra Costa Co.	6,20
62	2694.1	8"	Stockton	Castle AFB	Burns Cut off San Joaquin Co.	*
62	2697.1	8"	Stockton	Castle AFB	Stanislaus Riv. Stanislaus, San Joa. Co.	*
62	2693.1	8"	Stockton	Castle AFB	San Joaquin Riv. San Joaquin Co.	*
62	2696.1	8"	Stockton	Castle AFB	Tuolumne Riv. Stanislaus Co.	*
62	2695.1	8"	Stockton	Castle AFB	Merced Riv. Merced Co.	*
72	1903.1	8"	Benicia	Concord	Grayson Cr. Contra Costa Co.	12,50
72	1902.1	8"	Benicia	Concord	Walnut Cr. Contra Costa Co.	12,50
47	1902.1	8"	Concord	Travis AFB	Walnut Cr. Contra Costa Co.	*
8	1889.1	8"	Richmond	Concord	Diablo Creek Contra Costa Co.	6,20
64	2855.1	8"	Roseville	Chico	Feather River Sutter & Yuba Co's.	5,70

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t .)	Projected Annual Throughput (1,000 bbl.) 1976	1977	1978	1979	1980	GOVERNMENT AGENCIES SUPPLIED BY SPPL UNDER CALIF. STATE LANDS LEASE (Question 4a) Agency Name	**Delivery Rate (¢ per bbl.)
	17,414	17,951	18,700	19,490	20,324	YU, LU, WM, DM	77.1, 66.9, 71.0, 73.0
	13,775	14,179	14,740	15,330	15,949	CA, MT, MC	36.9, 32.4 32.4,
	13,775	14,179	14,740	15,330	15,949	CA, MT, MC	36.9, 32.4 32.4
	4,892	5,020	5,199	5,388	5,588	MT, MC	32.4, 32.4
	14,419	14,623	14,901	15,186	15,477	BE, RE, FA	41.6, 65.9, 110.5
						MC	32.4
						MC	32.4
	4,892	5,020	5,199	5,388	5,588	MT, MC	32.4, 32.4
	2,525	2,525	2,525	2,525	2,525	OZ, BE, RE, FA, MT, MC, CA, TR	Gathering line No Add'l. Chg.
						CA	30.4 & 36.9
						CA	30.4 & 36.9
						CA	30.4 & 36.9
						CA	30.4 & 36.9
						CA	30.4 & 36.9
	12,494	12,869	13,319	13,785	14,281	OZ, BE, RE, FA, MT, MC, CA, TR	Gathering line No Add'l. Chg.
	12,494	12,869	13,319	13,785	14,281	OZ, BE, RE, FA, MT, MC, CA, TR	Gathering line No Add'l. Chg.
						TR	2.4
	2,525	2,525	2,525	2,525	2,525	OZ, BE, RE, FA, MT, CA, TR	Gathering line No Add'l. Chg.
	6,680	6,750	6,843	6,937	7,033	N/A	N/A

(Continued on following page)

CHART 1—(Co

S.P.P.L. PIPELINE CROSSINGS OF CALIFORNIA STATE LANDS

(Questions 1a & 1b)

Line Sec. #	Lease	Size Line	From	To	Crossing Location	Current Annual Thruput (1,000 bbl.)
25	4086.1	14"	Concord	West Sac.	Pacheco Creek Contra Costa Co.	23,100
27	4086.1	12"	Martinez	Concord	Pacheco Creek Contra Costa Co.	9,000
33	4086.1	12"	Martinez	Concord	Pacheco Creek Contra Costa Co.	12,000
25	3811.1	14"	Concord	West Sac.	Carquinez Str. Solano & Contra Costa County	23,100
95	3811.1	10"	Benicia	Amorco	Carquinez Str. Solano & Contra Costa Co.	7,500
103	3811.1	12"	Benicia	Concord	Carquinez Str. Solano & Contra Costa Co.	12,500
41	4028.1	10"	Richmond	Brisbane	S.F. Bay San Mateo Co.	7,000
42	4028.1	12"	Richmond	Brisbane	S.F. Bay San Mateo Co.	12,000
24	3611.1	10"	West Sact.	Bradshaw	Sac. River Sac. City	14,200
28	3611.1	10"	West Sact.	Bradshaw	Sac. River Sac. City	2,300
—	3773.1	N/A	(Wharf Site, No Products)		Sac. River Yolo Co.	

*NOTE: With the permission of U.S. Defense Fuel Supply, Washington, D.C., we wi

**BE—Beale AFB
CA—Castle AFB
DM—Davis Monthan AFB
FA—Fallon NAAS
LU—Luke AFB
MC—McClellan AFB
MT—Math
OZ—Ozol N
RE—Reno

ontinued)

					GOVERNMENT AGENCIES SUPPLIED BY SPPL UNDER CALIF. STATE LANDS LEASE (Question 4a)	
Projected Annual Throughput (1,000 bbl.)						
1976	1977	1978	1979	1980	Agency Name	**Delivery Rate (¢ per bbl.)
24,100	24,747	25,633	26,562	27,536	BE, RE, FA	41.6, 65.9, 110.5
9,000	9,270	9,595	9,931	10,289	N/A	N/A
12,000	12,360	12,793	13,241	13,718	N/A	N/A
24,108	24,747	25,633	26,562	27,536	BE, RE, FA	41.6, 65.9, 110.5
7,500	7,725	7,995	8,275	8,573	N/A	N/A
12,500	12,875	13,326	13,792	14,289	OZ, BE, RE, FA, MT, MC, CA, TR	Gathering line No Add'l. Chg.
6,934	7,046	7,198	7,354	7,514	N/A	N/A
7,621	7,740	7,896	8,053	8,214	N/A	N/A
14,419	14,623	14,901	15,186	15,477	BE, RE, FA	41.6, 65.9, 110.5
1,292	1,350	1,431	1,517	1,608	N/A	N/A
					N/A	N/A

ill furnish the Annual Barrel Supply to the Military Facilities.

er AFB — TR—Travis AFB

Mil. Stg. — WM—Williams AFB

Military — YU—Yuma MCAS

RESPONSE OF SOUTHERN CALIFORNIA EDISON COMPANY

July 22, 1975

State of California
State Lands Division
1807 13th Street
Sacramento, CA 95814

Attention: Gary R. Horn

Gentlemen:

Subject: Leasing Rental Based on Throughput Charge
Your File No. W 5125.8

Attached is information requested in your letter of June 19, 1975. The only facility that we have that is directly affected by your proposed throughput rental is our Mandalay Generating Station Offshore Fuel Oil Pipeline. The answers to your questions are as follows:

Question 1a—The Lease No. is 2180.1 and the facility is located near Oxnard. The annual volume of fuel oil utilized by this facility this year is 3.4 million barrels.

Question 1b—The annual volume projected through the year 1980 is:

1976	3.6 million barrels
1977	3.4 " "
1978	3.4 " "
1979	3.6 " "
1980	3.6 " "

Note: Beginning January 1976, under long term contract, tankship deliveries of approximately 42 million barrels of fuel oil may pass through affected pipelines to produce utility fuels for Edison. Some of this fuel oil, produced by oil companies, will supply the fuel oil requirements of Mandalay Generating Station. This will involve moving fuel oil from refineries to offshore marine facilities to load tankers to transport the oil to Mandalay. This component of Edison's oil requirement will, therefore, be impacted three times by the proposed throughput charge. The first time when delivered to the refiners in the form of crude oil,

the second time when moved out of the refineries onto tankers for shipment to Mandalay in the form of fuel oil, and the third time when the fuel oil is off-loaded through the off-shore terminal at Mandalay. It is anticipated that the oil companies may pass through to Edison any tax or other government extraction of any kind levied against the crude oil products including the proposed throughput charge.

Question 1c—We have no additional facilities planned within the next five years.

Questions 2 through 5c do not apply to Edison.

Question 6—Throughput Rental Effect. Exclusive of any indirect charges previously mentioned which would be imposed by oil companies, the throughput charge on our Mandalay Facility would be $54,400 for the year 1975.

Question 7—Will you authorize the release of pertinent data? Edison would permit representatives of the State Lands Commission to review and inspect, during our office hours, the arrangements and agreements between Edison and any other company, corporation, or individual regarding the sale and transportation of petroleum and related products. If upon such review, your representative wished copies to be made for the Commission of any information from such agreements, we would be willing to make such copies, with the understanding that if the copies requested were voluminous, we would expect reimbursement of our cost of their reproduction.

As previously stated in my letter of May 2, 1975 to Mr. James F. Trout, Manager, Land Operations, the Southern California Edison Company is strongly opposed to the proposed throughput charge. We do not feel that it is a proper charge and it does not represent an accurate economic rate for use of vacant land. We do feel, however, that the 8% rate of return on the appraised value of the land, as proposed by the State, is not excessive or unreasonable.

Very truly yours,

/s/ P. B. Peecook

RESPONSE OF EXXON COMPANY, U.S.A.

July 23, 1975

In re: Commission Leasing Rental
Based on "Throughput"

Your File Reference: W 5125.8

California State Lands Division
1807 13th Street
Sacramento, California 95814

Attention: Mr. Gary R. Horn, Land Agent

Gentlemen:

In response to your letter of June 19, 1975 we are enclosing answers to your questions to Exxon Company, U.S.A., a division of Exxon Corporation, concerning the caption. We understand that separate responses will be forwarded to you by Exxon Pipeline Company.

We have attempted to answer each question completely and to the best of our knowledge. Our answers pertain to Exxon Company, U.S.A. operations in California.

All information set forth in our answers is confidential and is given in reliance upon Government Code, Section 11183.

Exxon Company, U.S.A. feels very strongly that any consideration paid to the State for pipeline leases should be related to the value of the land. A consideration arrived at in any other way would necessarily be arbitrary, confiscatory and unconstitutional since it would have no relevance to the rights granted. For these reasons, we recommend that rental rates be directly related to the value of the land affected.

Very truly yours,

/s/ D. G. Warner

DGW:MKN:kll
Enclosure as stated

Responses To State Lands Questionnaire

1a. We assume that this question does not pertain to petroleum products crossing the State Lands Commission lease from which they are produced. Upon this assumption, our answer is none.

1b. This does not apply in light of the above response.

1c. Exxon Corporation (of which Exxon Company, U.S.A. is a division) is presently constructing facilities to develop the Santa Ynez Unit located in Federal waters in the Santa Barbara Channel. Exxon Corporation and Exxon Pipeline Company of California jointly hold State Lands Commission Lease P.R.C. No. 4977.1 which grants them a right-of-way through State lands for the construction of a single point mooring facility, pipelines, and a power cable to be utilized in the production of the Unit. Exxon plans to construct the same when all necessary permits have been obtained.

2. Assuming that this question does not apply to city franchises, Exxon Company, U.S.A. does not pay rental on any leases in California on a throughput basis.

3a. Exxon Company, U.S.A. leases no pipeline facilities in the state of California to other parties on the basis of throughput.

4a. Exxon Company, U.S.A. does not operate any pipeline facilities under State Lands Commission jurisdiction for the convenience and purpose of supplying petroleum products to a governmental agency.

4b. To the best of our knowledge, the only pipeline facilities which Exxon Company, U.S.A. operates in California and which could be construed as being operated for the convenience and purpose of supplying a governmental agency are our refinery product pipelines at the Benicia refinery. Government owned or controlled vessels may from

time to time take delivery of petroleum products from Exxon's Benicia refinery through Exxon's product pipelines terminating at the most Westerly 1,000 feet of Pier 95. Said pipelines run along an easement granted to Exxon by Benicia Industries. No separate rental is paid for the easement although pier rental is paid by Exxon to Benicia Industries under the terms of the sublease covering the pier and the easement. No separate rental is paid on the pipelines.

4c. Inapplicable.

5a. Exxon Company, U.S.A. does not operate any pipeline facilities in California which are regulated by the Interstate Commerce Commission or by the California Public Utilities Commission.

5b and 5c. These do not apply in light of the above response.

6. A throughput rental rate would not affect any pipeline facilities in California now operated by Exxon Company, U.S.A.

7. This question is stated in terms so general that it would be very difficult to answer. We would have to judge each request for the release of pertinent information on the merits of that particular request.

RESPONSE OF EXXON PIPELINE COMPANY

July 24, 1975

Re: Commission Leasing Rental
Paid on Throughput

Mr. Gary R. Horn, Land Agent
State Lands Division
State Lands Commission
State of California
1807 13th Street
Sacramento, CA 95814

Dear Mr. Horn:

While this Company did not receive an inquiry from you, we have learned from representatives of other companies who have received such inquiries concerning pipelines located on State Lands and wish to voluntarily submit the following information:

1. Exxon Pipeline Company, a Delaware corporation, whose principal office is in Houston, Texas, has its principal operations in Texas, Louisiana, and Mississippi with smaller operations in the States of North Carolina, Florida, Alabama, Montana, and California. This Company owns and operates some 13,000 miles of pipeline of various sizes and insofar as we have been able to ascertain from a careful check of our records, this Company owns no pipelines on either publicly or privately owned lands which are subject to a lease or other agreement requiring the payment of an annual rental based on "throughput."

2. The overwhelming majority of the tracts of land crossed by our pipelines were crossed under a simple easement in perpetuity for which we paid a consideration at the time of purchase based upon the value of the easement acquired; and the value of the easement acquired was related to the value of the land. These easements require

no annual or other periodic payment of any kind. As the operator of common carrier pipelines, we are granted the right of eminent domain in all of the states in which we operate. Under such eminent domain statutes we are required to pay a consideration for the easements condemned based upon the current fair-market value of the rights acquired. In such condemnation proceedings, after the initial consideration is paid, no subsequent payments of an annual or periodic nature are required.

3. In the State of California, this Company owns and operates only one very short 20-inch pipeline used for the transportation of crude oil. This pipeline extends between the Tidewater refinery and the Exxon Company, U.S.A. refinery near San Benicia, California, and crosses lands owned by the State of California situated under Carquinez Strait located between Contra Costa and Solano Counties. Also located under Carquinez Strait, we have a 6-inch line of pipe which extends from the Exxon Company, U.S.A. tank farm at the refinery across Carquinez Strait where it ties into the 20-inch pipeline described above. This 6-inch line of pipe is used for the sole purpose of displacing the 20-inch pipeline with a light oil at the beginning of periods when the 20-inch pipeline is not in use. The heavy viscous crude oil transported in the 20-inch pipeline would congeal if left to stand in the pipeline when not in operation after being cooled by the cold waters of Carquinez Strait.

4. The following responses are made to questions asked in Attachment B to your letter sent to other companies:

1a. Carquinez Strait near San Benicia, California, Commission Lease No. 3811.1. Pipeline transports crude oil the volume of which varies from time to time. During the year 1974 this line handled 3,567,995 barrels.

1b. We have no way to arrive at a reliable projection of volumes through the above described pipeline during the period 1975 through 1980 since the volumes handled are dependent entirely upon facts and decisions not subject to our control.

1c. This Company has no present plans to construct any additional pipelines across Carquinez Strait during the next five years or at any other location in the State of California.

2. This Company presently has no existing leases for which it is currently paying rentals based on throughput. This answer applies to public agencies, port districts, as well as private parties.

3a. This Company has no facilities located either on State Lands or other public or private lands leased to parties on the basis of throughput.

4a. None.

4b. None.

4c. Inapplicable.

5a. None in the State of California.

5b. Inapplicable.

6. A rental rate based on throughput would have the effect of either (a) decreasing the profitability of the construction and operation of pipelines or (b) increasing the transportation charges to the shipper. This in turn would discourage the construction of new pipelines or increase the cost of petroleum products to the ultimate consumer.

7. This Company neither owns nor sells petroleum products. This Company's transportation of petroleum and petroleum products, as a common carrier, is public information covered by tariffs on file with the Interstate Commerce Commission. As to pipelines which

are not operated as a common carrier, transportation is provided under private contract, information about which could not be released without the concurrence of the other party to such contract.

I trust the information supplied herein will be helpful in your investigation and, I hope, will help to dissuade the Commission from attempting to establish rentals based on throughput.

Yours very truly,

/s/ Frank L. Heard, Jr.

RESPONSE OF DOW CHEMICAL U.S.A.

July 28, 1975
Mr. Gary R. Horn
Land Agent
State Lands Division
1807 Thirteenth Street
Sacramento, California 95814

Dear Mr. Horn:

This is in response to your recent questionnaire and request for information concerning Dow leases of rights of way for its pipelines across state lands and the impact on Dow's operations of the proposed rental rate schedule based on throughput.

Dow owns and operates two gas pipeline systems which delivers gas to our Pittsburg, California plant where this gas is used to produce chemical materials and to generate power and steam. We presently pay $933 per year to the State Lands Commission for leased rights of way for these pipelines. If the proposed rates based on throughput were to go into effect we estimate our costs would increase substantially.

Our Montezuma pipeline system, which gathers gas from fields in Solano and Yolo counties and delivers it to the Pittsburg plant via an 8-inch pipeline that crosses the San Joaquin and Sacramento rivers. We have a leased right of way from the State Lands Commission to cross the river with this line. This lease is PRC 4699.1. We have a grant of easement from the State Fish and Game Commission to cross lower Sherman Island with this line. This easement was obtained with a single one-time payment of $3,000. Our pipeline crossing the river is a buried one (55 feet depth) and it extends 9,484 feet. The line has a maxi-

mum carrying capacity of 35 million cubic feet per day of natural gas. Its present average utilization is about 10 million cubic feet per day.

Our present lease rental for a 30 feet wide right of way is $759.04 per year. Our costs would increase to $9,733 per year for this river crossing if the present average throughput of 10 million cubic feet per day continued. If we were required to pay an additional throughput tariff for that portion of the line (8,205 feet) that crosses Sherman Island, we estimate that we would be $12,167.

The second pipeline system owned by Dow and operated to serve our Pittsburg plant is known to us as our Sacramento River Gas System. This is an 8-inch line. It brings gas from the Dutch Slough area near Brentwood to our plant. We lease a San Joaquin River crossing (your PRC 3768.1) from Sherman Island to Dutch Slough. The Dutch Slough crossing is via a county bridge and is not leased from the State Lands Commission.

This San Joaquin River crossing is for an 8-inch line and our lease covers a 1,995 feet long right of way. This line carries five million cubic feet of gas per day and this is all that we foresee that this line will ever carry since wells in the Dutch Slough are losing their ability to produce gas.

Our present lease rental under PRC 3768.1 is $173.97 per year for a 30 feet wide right of way. The proposed rental based on throughput would raise our costs to $2,737.50 per year at its present flow rates.

We are proposing to construct a $500 millions petrochemicals plant in Solano County for the purpose of producing feedstocks to be moved under the Sacramento and San Joaquin Rivers to our Pittsburg plant. Environmental Impact Statements have been prepared and permits have

been applied for in connection with this project. We expect that three, perhaps four, 10-inch pipelines from Solano County would be required to handle these hydrocarbon feedstocks and that the route of these pipelines would parallel our present pipeline right of way that is described in your PRC 4699.1.

Our proposed Solano County facility could be described as a naptha cracker. It will process naptha, a petroleum product which has already undergone a stage of refining. This naptha will be brought to the Solano County site by ship. The naptha cracker will produce ethylene, propylene and hydrogen, which are the basic building blocks for Dow's petrochemical products. There will be considerable volumes of these gaseous materials moved from the Solano County naptha cracker to our Pittsburg site via the proposed pipelines. At this time we estimate these annual volumes to be 11 million cubic feet of ethylene, 2.7 million cubic feet of propylene and 5.8 million cubic feet of hydrogen.

If the proposed throughput formula were to be applied to these materials as well, then we would estimate our costs would be an additional $66,000 per year.

It would be our hope that a special classification for feedstock materials of this type could be considered, since the pipeline system merely connects one major chemical plant which happens to be separated into two parts by a river. There is an insufficient amount of land available at the Pittsburg site to locate the naptha cracker on the Pittsburg side of the river.

Cordially yours,
/s/ Jack
Jack Jones

Manager
Government and Community Relations

/fg

RESPONSE OF THE SEELEY COMPANY

July 28, 1975

Mr. William Northrup
Executive Officer
State Lands Commission
1020 Twelfth Street
Sacramento, California 95814

Dear Mr. Northrup:

It is my understanding that there is a proposal before the commission to change the basis for determining rentals for petroleum pipeline rights-of-way across State-owned property.

It seems certain that changing the rent structure to a throughput basis would result in increased costs to California users of petroleum products, increasing inflationary pressures and placing our industrial employers at a competitive disadvantage. With the present unemployment picture I don't see how California can afford to take any further action which would discourage industry from remaining in the State.

There is no apparent logic for changing the method of determining right-of-way rent from a fair return on the value of the land used to a throughput measurement basis. There is no comparison between a right-of-way under which the Lessee constructs, operates and maintains the improvements and wharfage when the port authority constructs and maintains the waterways, and provides support services.

I feel that it is important to the economic health of California that the State Lands Commission reject the proposed change in rental on petroleum pipeline rights-of-way.

Very truly yours,

THE SEELEY COMPANY
/s/ PETER W. MEYN
Peter W. Meyn

pWM :lw

SUPPLEMENTAL RESPONSE OF PACIFIC GAS & ELECTRIC COMPANY

July 29, 1975

Supplemental Information to the Long Beach Meeting on Proposed "Throughput" Charges. 28

State Lands Commission
State Lands Division
1807 13th Street
Sacramento, California 95814

Attention: Mr. Gary R. Horn, Land Agent

Gentlemen:

At the July 22, meeting in Long Beach, some questions were asked about certain of our proposed projects and existing facilities for which we promised additional information. These questions with their respective answers are:

1. What has happened to your proposal to use lands under SLC jursdiction to enlarge your off-shore tanker facility at Moss Landing?

We are presently in the process of answering the questions raised by the State Lands Commission as a result of a review of the draft environmental impact report for which the Commission is lead agency. The answers have been long in coming because, in some instances, they require field work and even additional permits before the work can be done, soil investigations, etc. We expect to have the questions answered by late summer or early fall. At which time, we will forward the answers to the SLC. A final decision to proceed with this project has not been made.

2. What would be the additional burden on your Company if the proposed "throughput" formula was applied to your fuel oil line crossing over SLC lands to supply your Pittsburg and Contra Costa Power Plants? The pro-

jected amount of low sulphur oil that would be transported by means of our fuel oil pipeline and the respective impact on our customers for each of the two SLC lands crossings for the years 1975 through 1985 is:

Year	Barrels	Schedule "B" Factor	Each Crossing Dollars	Total Impact Dollars
1977	15,000,000	$.008	$120,000	$240,000
1978	16,875,000	.008	$135,000	$270,000
1979	18,750,000	.008	$150,000	$300,000
1980	20,625,000	.008	$165,000	$330,000
1981	22,500,000	.008	$180,000	$360,000
1982	24,375,000	.008	$195,000	$390,000
1983	26,250,000	.008	$210,000	$420,000
1984	28,125,000	.008	$225,000	$450,000
1985	30,000,000	.008	$240,000	$480,000

Since there are two crossings on SLC lands, the total dollar impact for each year would be twice the amount shown in the table; the total tariff charges for 1977 would be $240,000.

3. How much fuel oil was off-loaded on State lands at Pittsburg Power Plant and what would be the burden on your company if the proposed "throughput" formula was applied?

Year	Barrels	Schedule "A" Factor	Dollars
1974	4,300,000	$.02	$ 86,000
1975	5,130,000	.02	102,600
1976	9,000,000	.02	180,000
1977	9,200,000	.02	184,000
1978	12,000,000	.02	240,000
1979	12,000,000	.02	240,000
1980	12,000,000	.02	240,000

The projected quantities of fuel oil off-loaded at Pittsburg Power Plant after 1976 would be subject to revision if the fuel oil pipeline also is supplying fuel oil to the power plant at that time.

4. In your agreement with Urich Oil Company, when do you take ownership of the fuel oil and why wasn't approval for your lease agreement obtained from the SLC?

The fuel oil that will be off-loaded at the Urich Oil Company facility at Martinez into four each 500,000 bbl. storage tanks will belong to PGandE. Urich Oil Company will be supplying us with marine wharf facilities and storage facilities together with all necessary appurtenances thereto and nothing more.

We are of the opinion that no written consent by the SLC was necessary prior to the agreement between Urich Oil Company and PGandE. The condition in the standard lease refers only to subleasing the land and reads as follows:

> "That the Lessee shall not transfer nor assign this agreement and shall not sublet said land nor any part thereof, except upon the prior written consent of the State first had and obtained."

Our agreement with Urich Oil Company deals only with facilities and product and does not involve the land. Therefore, assuming that Urich Oil Company has a standard SLC lease, we came to the aforestated conclusion.

If we can be of any further assistance, please call Elmer H. Dunstan, (415) 781-4211, extension 2462.

Very truly yours,

/s/ P. J. MATTHEWS
Supervisor of Permits and
Environmental Planning

EHDunstan:MZ

RESPONSE OF TEXACO INC.

July 31, 1975

File Ref.: W 5125.8

Mr. Gary R. Horn, Land Agent
State of California—State Lands Commission
State Lands Division
1807 13th Street
Sacramento, California 95814

Dear Sir:

In response to your letter of June 19, 1975 and Attachment B, the following information is furnished in answer to each of the questions:

1a. A. *P.R.C. 4017.1—Tract 402 (OCS-P-0241).* Texaco Inc. has an undivided 17½% interest in pipeline serving P.R.C. 4017.1, which Union Oil operates and will report on pipeline easements covering this lease.

B. *P.R.C. 2725.1—Anita Lease, Platform Herman.* No production at this time.

C. *P.R.C. 2206.1—R/W 5027, Jade Lease Platform Herman.* A section of our line to shore crosses an adjacent ARCO State Lands lease P.R.C. 2642.1. The State granted Texaco Inc. a "paid-up" one-time consideration $5,650.19; Filing Fee $105 ($75 refunded); Term 49 years, issued September 29, 1968.

D. *P.R.C. 2763.1—R/W 5512* — Known as Texaco's Morro Bay Marine Terminal. Acquired June 16, 1961, 15 year term with option to renew two 10 year periods. Covers approximately 167 plus or minus acres offshore mooring area. Two ten inch 3590 ft. submarine pipelines. Average thruput—244,000 barrels per year.

1b. The estimated projection on Morro Bay is as follows:

1976—222,000
1977—224,000
1978—226,000
1979—228,000
1980—230,000

1c. No immediate plans for additional facilities on State Lands.

2. Existing lease (agreements) under which we are paying rent based on thruput in State of California:

A. *San Jose, Ca. Pipeline Terminal* — Operating Agreement with Southern Pacific Pipe Lines; effective 1/1/74, for five years and continuous thereafter until cancelled by either party on 60 days' notice.
Rent: 6.9¢/Bbl., based on product delivered by SPPL to Texaco.

B. *Imperial, Ca. Pipeline Terminal* — Operating Agreement with SPPL
Effective 1/1/74 for five years and continuous thereafter until cancelled by either party.

Rent: 11¢/Bbl. based on product delivered by SPPL to Texaco.

C. *Sacramento, Ca. Pipeline Terminal* — Operating Agreement with SPPL
Effective 9/16/68. Continuous until cancelled by either party on 6-month written notice.
Rent: 7¢/Bbl. on product delivered by SPPL to Texaco.

D. *Barstow, Ca. Pipeline Terminal* — Vapor Disposal Agreement with Calnev.
Effective: 1/1/72 for one year and thereafter year to year until cancelled.
Rent: 3¢/Bbl. for each barrel gasoline delivered to Texaco by Calnev.

E. *Colton, Ca. Pipeline Terminal* — Vapor Disposal Agreement with SPPL.

Effective: 1/1/72 for ten years and continuous thereafter until cancelled by either party on one year's notice.

Rent: 1.4¢/Bbl., for each barrel of gasoline delivered by SPPL to Texaco.

F. *Redwood City Port with Dock* — Leased from Port Commissioners, city of Redwood City. Nine acres at $225 per month, plus wharfage fee — $0.01 per bbl. (Jan.-April) and $0.015 per bbl. (May-Dec.) 1974 figures.

G. *Long Beach Harbor*

Texaco Marine Terminal 10.82 acres. Rental 6% return on appraised value, sq. ft., 40 year term. Current thruput charges average $0.023 per barrel.

3a. Lessee — Douglas Oil Company. Area of Lease — Pipeline between Continental Oil Co. Grubb Lease, north of Highway 101, west of San Miguelite Road and Shell Oil Company's Gosnell Lease, east of North Ventura Avenue. 29,741 ft. of six inch pipeline. Subject to 90 day termination by either party. Rental rate — $0.03/Bbl.

4a. Texaco Inc. has no such facilities.

4b. Texaco Inc. has no such facilities.

4c. Not applicablb, since negative answers were given for 4a and 4b.

5a. Texaco Inc. does not have any pipeline facilities regulated by the ICC or CPUC, in the State of California.

5b. No tariffs published.

5c. Not applicable.

6. Increase cost of operations and could cause review of possible alternates.

7. As we understand, an affirmative response to this question would entail advance authorization to release confidential and proprietary information which we are not prepared to divulge at this time. However, we will take under advisement any further request for specific information which is related to your investigation.

Yours very truly,

TEXACO Inc.
By /s/ D. L. Sedgwick
Vice President

DAS-mc

RESPONSE OF SOUTHERN CALIFORNIA GAS COMPANY

August 18, 1975

State of California
State Lands Commission
State Lands Division
1807 13th Street
Sacramento, California 95814

Attention: Mr. Gary Horn
Land Agent

Enclosed are the answers to your questionnaire. I am sorry it has taken so long to respond, but some of the people who wanted to review the answers have been on vacation.

Please keep me informed of the progress on the new fee consideration, and if you have any questions please call me.

/s/ Lloyd A. Ray
Supervisor of Rights
of Way Procedures

LAR:mn
Enclosures

Attachment B Answers

Question 1a.

State Lands Lease No.	Geographic Location	Company Line and Right of Way No.	Annual Volume
2533.1 (expires 4-28-2009)	Colorado River, Needles	Line 235 235-1.1	240.2 Billion cu. ft.
1802.1 (expires 10-15-2005)	Colorado River, Topock	Line 3000 R/W 8410	207.5 Billion cu. ft.
3642.1 (expires 12-19-1976)	Colorado River, Blythe	Line 2000 R/W 27,059	389.7 Billion cu. ft.

The following are School Lands:

3643.2 (expires 12-19-1976)	Section 36, T 6 S, R 20 E, S.B.B. & M.	Line 2000 R/W 8011-B	This is a continuation of the line above Lease No. 3642.1
1815.2	Section 36, T 8 N, R 7 E, S.B.B. & M.	Line 2000 R/W 18,503	
1814.2	Section 16, T 7 N, R 23 E, S.B.B. & M.	Line 3000 R/W 18,507	This is a continuation of the line above Lease No. 1802.1
1826.2	Section 25, T 7 N, R 13 E, S.B.B. & M.	Line 3000 R/W 18,511	

Question 1b.

Colorado River Needles Line 235 will have an anticipated flow of *98.0 Billion cu. ft. in 1980.

Colorado River Needles Line 3000 will have an anticipated flow of *180.0 Billion cu. ft. in 1980.

Colorado River Blythe Line 2000 will have an anticipated flow of *190.0 Billion cu. ft. in 1980.

Question 1c.

Potential LNG unloading site offshore deep water, Port Hueneme area.

Question 2.

We presently do not have any leases where easement charges are based on throughput.

Question 3a.

None

Question 4a.

None

Question 4b.

This question would be impossible to answer. *All* government installations in our serving area have their own service and metering facilities. The rates are filed with the C.P.U.C.

Question 4c.

No variance of rates. The applicable rate as filed with the C.P.U.C. will prevail.

Question 5a.

All of our pipelines and facilities fall under the jurisdiction of C.P.U.C.

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*These estimated calculations are based on present known supplies.

Question 5b.

No answer. Does not apply.

Question 5c.

No answer. Does not apply.

Question 6.

The 1976 renewal for Line 2000 in Blythe will increase our costs from $780 for 15 years to an annual cost of $360,000.

The estimated costs for unloading the LNG at Oxnard (Port Hueneme) will cost $306,600.

Question 7.

Upon request we will review and determine at that time what data and/or agreements can be released that are not already a matter of Public Record.

RESPONSE OF SHELL OIL COMPANY

October 10, 1975

Mr. Gary R. Horn
Land Agent
State Lands Commission
1807 13th Street
Sacramento, California 95814

Dear Mr. Horn:

This has reference to your letter of June 19, 1975, File W 5125.1, concerning questions posed to Shell Oil Company on the subject Commission Leasing Rental based on "throughput".

We regret your June 19 letter was misdirected to one of Shell's field offices and did not come to our attention until recently.

Attached is Shell's response to the questions raised in Attachment B to your letter. We have attempted to answer them to the best of our ability based upon our present knowledge of Shell's present activity and future plans.

Please especially bear in mind our comments concerning Question 7 regarding assurance of adequate confidentiality before release of pertinent data.

If we can be of further assistance, please let us know.

Yours very truly,

/s/ W. J. GRILLOS
Manager, T&S Pipe Lines—
West Coast Division

1a. Attachment I identifies the geographic area, State Lands Commission lease number, and the estimated annual volume of petroleum products crossing lands under the SLC's jurisdiction insofar as it leases to Shell Oil Company are concerned. The volumes shown are based upon actual figures for the first three months of 1975 projected at the same rate for the entire calendar year.

1b. Due to uncertainties under present and future federal and state statutes and regulations, in the economy, and in our own operations, no meaningful forecast can be made as to projected volumes through 1980.

1c. For the same reasons enumerated in 1.b above, we cannot project additional facilities which might come under State Lands Commission jurisdiction within the next five years. However, Shell does have one current project to transport low quality natural gas from the Sacramento area to Shell's Martinez refinery. Shell has applied to the California State Lands Commission for the necessary permits. Attachment I does not include the details as this application is not final.

2. We have no ground leases (i.e., leases where the lessee is given no right to use improvements owned by the lessor) occupied by any of our pipeline facilities, for which we are currently paying rent based on throughput. We do, however, pay dock fees to the Port of Los Angeles based on throughput of petroleum products unloaded from vessels at dock facilities owned by the Port. These wharfage charges, however, are covered by a published tariff (refer to Item 415 A-31, Port of Los Angeles Tariff No. 3), and are an acknowledged and equitable way for the Port to recover from the various users of such facilities a reasonable rate of return on the Port's significant capital investment therein. We also pay throughput charges to the City and County of San Francisco where our lease gives us the right to use the lessor's wharf facilities.

3a. The substance of the questions posed herein relates to land usage for pipeline and related purposes, so we have assumed that the reference to facilities in this question is intended to refer to leases of land rather than improvements or facilities. Shell has no California ground leases to third parties based on throughputs.

4a. Shell Oil Company has no facilities under State Lands Commission jurisdiction which are operated solely for the convenience and purpose of supplying petroleum products to a governmental agency, although all of them have been or are involved to some degree in handling product supplied on occasion to a government agency or used to manufacture such product.

4b. Shell Oil Company has no facilities not under SLC jurisdiction which are operated solely for the convenience and purpose of supplying petroleum products to a governmental agency. As previously stated in 4a above, however, virtually all of our facilities have been or are involved to some degree in handling product supplied on occasion to a governmental agency or used to manufacture such product.

4c. We do not understand this question.

5a. Shell Oil Company has no pipeline facilities in California regulated by the ICC and/or the CPUC.

5b. Not applicable.

5c. Not applicable.

6. A throughput rental rate of the magnitude proposed would have the immediate effect of increasing our pipeline operations cost in California by an estimated $800,000 annually—a cost that will ultimately be borne by the consumers, largely Californians. Further, we have many more leases with other governmental entities, such as cities and counties, as well as private landowners, than with the State Lands Commission, and the imposition of a throughput rental rate for pipeline operations across State Lands could lead such entities to demand the same terms in any future negotiations for new leases or renewal of existing

leases. Such an occurrence could increase our costs of operation by several millions of dollars per annum—a cost, as previously stated, which would ultimately have to be borne by the consumer.

7. Because we regard our agreements with other parties as confidential, our policy is against voluntary disclosure of any information concerning them. Whether or not we would make exception to that policy would depend on the nature of the particular information requested, and the assurances given for preservation of its confidentiality.

Attachment I

Summary of Existing State Land Commission Agreements

System	Permit	Area	Facility	Present Throughput
Ryer Island Gas Line (Suisun Bay)	PRC 3978.1 dated 5-1-68	12,789′ x 25′	12″ P/L 4″ P/L	28 MMCFD 40 b/d
Ryer Island Gas Line (Suisun Bay)	PRC 4303.1 dated 8-28-69	6,211′ x 25′	4″ P/L 3″ P/L	4 MMCFD
Bay Area Prods. Line (San Francisco Bay)	PRC 3291.1 dated 4-29-65	12,500′ x 50′	10″ P/L	16,354 b/d
Martinez Refinery	PRC 4908.1 dated 8-1-74	20 ± Acs.	Wharf & 18 P/L	99,726 b/d

Note: Estimated thruputs based on January thru March 1975 averages.

STATE LANDS COMMISSION MEMORANDUM

DATED JULY 18, 1975

JAMES F. TROUT, Manager
Land Operations
via
1. L. L. Patton
2. L. H. Grimes

July 18, 1975

W 5125.1

STATUS OF THROUGHPUT RENTAL PROJECT

As of this date we have responses to our questionnaire from P. G. & E., Holly Corporation (Ozol Terminal) and Burmah Oil and Gas Company. I have received telephone calls from most of the companies who received the questionnaire, advising me that they were working on responses and would have something for us within a week or two.

In response to information received from P. G. & E., Jim Fiack and I visited the Port of San Francisco offices on Thursday, July 17th. We spoke with Mr. Harry J. Thiemann, Commercial Property Manager and his assistant, Mr. Reamers. According to information supplied by P. G. & E., the Port of San Francisco charges them a wharfage fee of 35¢ per ton (long) of fuel oil used in the Hunters Point and Petrero power plants. Our visit to the port was to confirm what services or benefits the port provided for the 35¢ wharfage fee.

Mr. Thiemann stated that both wharves were built by P. G. & E. (the Hunters Point facility was a trespass for some years). P. G. & E. maintains both sites without assistance from the Port of San Francisco. Mr. Thiemann stated that the port provides no benefits or services to P. G. & E. for either wharf facility. In addition to the 35¢ per ton wharfage fee, the port rents the wharf site to P. G. & E. for 2¢ per square foot per month (4,091 sq. ft.

m/l), plus a dockage fee in accordance with the published tariff.

In sum, it appears that the Port/P. G. & E. leases for the Hunters Point and Potrero wharves are identical situations under which the State Lands Commission administers its lands. The port now collects a "throughput" charge of approximately 5¢ per barrel for no services or benefits provided except the terminal site. We will explore this further with P. G. & E. at our upcoming meeting.

Meetings have been arranged with the utility companies (July 22, 1975, 1:30 p.m. Long Beach Office of the SLD); pipeline companies (July 23, 1975, 9:30 a.m., Long Beach Office of the SLD); W.O.G.A. and oil companies (July 31, 1975, 9:30 a.m., Office of the Attorney General in Los Angeles). We had hoped to have most of the responses before the meeting; however, it appears that most of the responses will be hand carried to the meetings.

Jim Fiack is now looking into the economic impact of the throughput rental on the rate-payers of the utilities. This information can only be developed after the meetings are held and the questionnaire responses analyzed.

I am available to discuss the details of the project at any time.

G. R. HORN
Land Agent

MATERIAL PROVIDED BY WESTERN OIL & GAS ASSOCIATION AT MEETING OF JULY 31, 1975 (1ST ITEM)

SUMMARY OF NON-EXTRACTIVE LEASES—WOGA COMPANIES

(Involving Flow of Petroleum and Petroleum Products)
(Excluding 49-Year Leases)

	Marine Terminals	Pipeline Rights of Way	Total
Number of Leases	18	21	39
Current Annual Rental	$ 231,000	$ 56,000	$ 287,000
New Minimum Annual Rental	355,000	86,000	441,000
Proposed Annual Throughput Rental (Based on Current Volumes)	5,821,000	2,348,000	8,169,000
Multiple Portion	1,400,000	800,000	2,200,000
Marine Terminals Investment and Expense Data:			
Gross Investment	$35,000,000		
Current Replacement Cost	126,000,000		
Annual Maintenance Cost	2,000,000		
Annual Dredging Cost	1,000,000		

MATERIAL PROVIDED BY WESTERN OIL & GAS ASSOCIATION AT MEETING OF JULY 31, 1975 (2D ITEM)

Build-Up of Throughput Rentals

	Cumulative Totals		
Year	Marine Terminals	Pipeline Rights of Way	Total
1975	$ 82,000	$ [illegible]	$[illegible]
1976	1,266,000	974,000	[illegible]
1977	3,514,000	1,506,000	5,020,000
1978	3,514,000	1,888,000	[illegible]
1979	4,429,000	[illegible]	[illegible]
1980	4,429,000	[illegible]	[illegible]
1981	4,429,000	2,319,000	6,748,000
1982	5,132,000	2,319,000	7,451,000
1983	5,132,000	2,348,000	7,480,000
1984	5,495,000	2,348,000	7,843,000
1985	5,795,000	2,348,000	8,143,000
1986	5,795,000	2,348,000	8,143,000
1987	5,795,000	2,348,000	8,143,000
1988	5,821,000	2,348,000	8,169,000

MATERIAL PROVIDED BY
WESTERN OIL & GAS ASSOCIATION
AT MEETING OF JULY 31, 1975 (3D ITEM)

Salient Points Regarding Major California Ports

1. Rental for industrial sites leased from the ports is based on a return (e.g., 6%, 8% or 9%) on the appraised value of the land. No throughput rentals have been reported.

2. Besides income from the rental of land, the ports also receive income from wharfage fees levied against cargo transported across their docks, dockage fees levied against ships using the docks, and other similar fees for services and facilities provided by the ports.

3. The income derived by the ports is used to offset their substantial operating expenses and to recapture their substantial investment in port-owned facilities. An attempt to make a rate of return of roughly 7% on their investment has been mentioned.

4. Offsetting the need to derive income for the reasons noted above is the need for each port to remain competitive with other ports, which becomes another factor in determining their wharfage, dockage and other fees.

5. An informal control over the level of fees is maintained by the California Association of Port Authorities, which seeks, to some extent, to achieve a general uniformity of fees among its member ports. Moreover, all fee schedules adopted by the ports must have the approval of the Federal Maritime Commission.

STATEMENT BY SOUTHERN CALIFORNIA GAS COMPANY DATED APRIL 21, 1976

Southern California Gas Company
Statement in Opposition to
Proposed Amendments to Title 2,
California Administrative Code,
Article 2. Wednesday, April 21, 1976

I am Reine J. Corbeil, Manager of Environmental Affairs for the Southern California Gas Company. The Southern California Gas Company is an investor-owned natural gas utility serving a population of over 11 million in southern California.

At public hearings held last year on an earlier version of the proposed changes to the Commission's rental regulations, we expressed our opposition to certain of the amendments. We were opposed at that time to provisions relating to computing rental rates based upon the volume of commodities passing over State lands. Our detailed statement defining the basis for our opposition to the "throughput" concept was made on May 2, 1975 in Long Beach.

This latest version of proposed changes to Title 2, California Administrative Code, Article 2, again embodies provisions for rental fees for industrial and right-of-way leases based upon throughput volume. Conspicuously absent in this version of the proposed amendments are the fee schedules contained in the earlier version of the proposed changes.

We continue to be opposed to the "throughput" concept for the same reasons expressed in our previous statement of record. I feel it is important to briefly reiterate our major concerns.

We believe that the Commission by adopting, the "throughput" charge provision, runs a serious risk of ds-

tablishing a dangerous precedent for other governmental jurisdictions to follow. The large majority of natural gas consumed in southern California is imported from out of state. Transmission pipelines delivering natural gas to southern California traverse not only lands within the jurisdiction of other states, but cross numerous areas within California which are under federal and local government jurisdictions. If these other governmental authorities were to adopt similar provisions for "throughput" charges in their lease and right-of-way agreements, Californians could well be burdened with inordinate costs for which they receive no benefit. Clearly the implications of this precedent setting provision are significant.

Next we feel that rental fees assessed by the State Lands Commission based upon throughput volumes have no correlation whatsoever to services rendered by the State. We can find no rationale for basing annual rental fees on throughput volumes for leases of unimproved lands where the State has made no capital expenditures which need be amortized nor where any operational or maintenance costs are incurred. The only rational and correct method for computing the annual lease fee for unimproved land is on the basis of the appraised value of the land.

Further, we are unconvinced that the provisions of the proposed changes will exclude multiple charges being assessed by the State on identical commodity volumes. Section 2007. (b) (1) of the proposed amendments provides that multiple charges will not be imposed on an "identical commodity for passage over the same State land over which it is again passing, provided the commodity is still in the same ownership . . . " Since California gas utilities frequently interchange gas supplies, these volumes could have repeat "passage over the same State land", resulting in multiple charges. In addition multiple charges would occur when the identical commodity crosses State lands at

more than one location under the same or different ownership.

For all the reasons given we feel that the "throughput" charge concept applied to leases of State lands is not in the best interest of the citizens of this State. It must be realized that "throughput" charges imposed upon the public utilities will be passed on to the utility customers. This occurring at a time when every effort is being made to compensate for spiraling energy costs.

The Southern California Gas Company urges the State Lands Commission to reject the "throughput" charge concept and continue to use their present methods for calculating annual rental fees.

STATEMENT BY F. R. HENREKIN DATED APRIL 21, 1976

Statement to the State Lands Commission
April 21, 1976

Mr. Chairman and Members of the Commission

Your agency are presently considering changes to the regulations governing the rental rates for pipelines passing over state lands.

It is proposed that rentals will be based upon the volume of commodities passing over state lands. We are opposed to the imposition of this proposed rate schedule.

California presently has a very unfavorable business climate and a serious unemployment problem. We are in competition with other states to locate job producing industry and the imposition of these additional rental costs will be a further deterrent to economic development in California. We cannot continue to impose additional costs upon business and expect to attract new firms who will produce jobs for California.

Through the remainder of this decade there will be twice as many people reaching age 20 and entering California's labor force as people leaving the job market by retirement, not taking immigration into account. It means that the state's economy must produce 170,000 new jobs annually just to stay even. Actions like this increasing the cost of doing business will be a further restraint to industrial and business growth and job opportunities in California and should be carefully evaluated. The additional costs cannot be absorbed by California firms and must be passed on as a cost of doing business. This will increase the cost of merchandise or services and the consumer will pay the cost. It is in reality an indirect tax.

F. R. Henrekin
Industrial Development
Consultant, Solano County
Industrial Development Agency

STATEMENT BY DEPARTMENT OF DEFENSE
MAILED APRIL 20, 1976

Before the State Lands Commission
of the State of California State Lands Division
Sacramento, California 95814

File No. W 5125.8

Proposed Changes to the Commission's Rental Regulations for Pipeline Rights of Way—2 Cal. Admin. Code, Sections 2006-2007—Volume of Commodity Rates

Comments of the United States Department of Defense

Comes now the Secretary of the Army, through duly authorized counsel on behalf of the United States Department of Defense (DOD) and files the following comments in the above-styled case.

The Interest of the Department of Defense

In its efforts to meet the nation's defense requirements, the Department of Defense has established, maintains and operates numerous military installations throughout the United States and within the State of California. In the State of California and western Nevada alone there are nine major air force bases utilizing jet fuels and other petroleum products which pass through pipelines located in the State of California. DOD estimates that some 9,285,000 barrels of petroleum products are shipped annually to its military installations through pipelines in California. Assuming that all or substantially all of the throughput charges proposed in this proceeding will be passed through to the shippers of petroleum products, it is estimated that the pipeline transportation costs of the Department of Defense will increase, as a result of the proposed regulations, by over $100,000 annually.

The Secretary of the Army has been designated as the single manager for all DOD transportation requirements,

including shipment of petroleum products. The Secretary exercises this function through the Military Traffic Management Command, a Department of Army Command responsible for insuring that DOD transportation resources are so organized and managed as to assure optimum responsiveness, efficiency and economy in support of the defense mission. In obtaining transportation services, DOD is required to select those means of transportation which will meet DOD requirements satisfactorily at the lowest over-all cost from origin to final destination. Department of Defense Directive 4500.9, 29 November 1971, 32 C.F.R. Accordingly, the Department of Defense is greatly concerned about any proposed regulations which might affect its ability to provide adequate petroleum transportation services to military installations in California and Nevada at the lowest over-all cost to the United States.

1. *The Revised Regulations Have Been Offered Under Circumstances and Time Constraints Which Unreasonably Limit Meaningful Comment by Interested Parties.*

DOD recognizes that the question of whether rental charges for pipeline rights of way should be based on throughput has been before the Commission for over a year. However, the announcement and scheduling of the most recent hearing on the Staff's revised proposal gives woefully inadequate time for consideration and presentation of views concerning this important matter. While the staff has had nearly a year to formulate their revisions to the original proposal, interested parties such as the Department of Defense have had less than 10 days notice of these revisions to prepare a response. As indicated above, the proposed charges are likely to have a substantial impact on DOD and certainly an equal, if not greater, impact on other major shippers of petroleum products, as well as upon the pipelines themselves. Under such circumstances it is imperative that those most directly affected be given full and complete opportunity to respond to these pro-

posals. DOD, for example, has had considerable experience in leasing techniques for Federal lands which might be helpful to the Commission, but such information cannot be developed within the abbreviated time frame given. Additionally, full assessment of the actual impact of the revised proposals on DOD transportation requirements and routing arrangements cannot be determined without a reasonable time to study these new proposals. DOD strongly urges that no action be taken on the revisions without affording interested parties additional time (at least 30 days) to review these proposals and an opportunity to present additional evidence based thereon.

2. *The Regulations Proposed, If Adopted, Unfairly Impose Increased Charges on Existing Pipeline Facilities Which Have No Practical Alternative To The Crossing of State Lands.*

The revisions offered by the staff appear to make no distinction whatsoever between the charges to be assessed for existing rights-of-way as opposed to new rights-of-way granted by the Commission. As the Commission is undoubtedly aware, many of the pipelines which may be subjected to the new charges have been in place, providing transportation services across state lands for many years. These pipelines represent large fixed investments in plant which cannot be relocated without prohibitive and wasteful expenditures. Additionally, some pipeline facilities were constructed primarily to service military facilities and could not be relocated without substantial disruption of defense fuel requirements. Undoubtedly many, or all, of the pipeline routings were determined in reliance upon existing state rental practices and under the assumption that such practices would remain relatively stable. Accordingly, any radical departure in the level or calculation of charges for the lease of state lands places an unreasonable burden on both pipeline and shipper since they are, in a very real sense, captive lessees, having no reasonable alternative to

the charges that the State proposes. In the case of new rights-of-way, the prospective lessee has the opportunity to take or leave the proposal and to plan pipeline routing accordingly. Such options are unlikely to exist for pipeline facilities already in place over state lands. In DCD's view it is incumbent upon the Commission to give considerable weight to this substantial commitment of facilities and the reliance by the pipelines upon long-standing rental practices. If the Commission determines that volume based rates are otherwise lawful, recognition of the inherently inequitable nature of the proposed volume charges on in-place facilities could be accomplished by exemption of existing pipeline leases from the volume charges and a judicious application of the charges in other cases.

3. *The Regulations Proposed Leave Unanswered Many Questions Concerning The Basis For Assessment of Volume Charges.*

The proposed regulations appear to offer the Commission three alternatives for the assessment of rental for rights-of-way and Section 2006(c) provides several factors which the Commission shall consider when determining which method shall be selected. Section 2006(c)'s enumeration of factors, however, raises more questions than it answers. Factors (1) and (2), as they relate to volume charges, appear to imply that volume charges are in part based on considerations of potential environmental damage which might be caused by pipeline operations. If volume charges are meant to compensate the State for the risk of possible environmental damage then the Staff should indicate the extent to which this affects or absolves the pipeline and shipper of common law liability for damages to the leasehold. No indication is given as to the relative weights to be accorded these various factors and the list does not appear to allow, require, or accord consideration to the interests of either the carriers or shippers, particularly the historical reliance by the carrier on the use of

state lands under long-standing conditions. Further, there is no indication whether the Commission's choice of alternatives will be uniform for all state lands or may vary from lease to lease, a situation which would permit discrimination between and among different carriers.

4. *The Proposed Regulations Appear to Constitute an Unreasonable Burden on Interstate Commerce.* DOD concurs with the argument previously advanced by various other parties that, in the absence of evidence establishing a reasonable relationship between volumes of oil passing through a pipeline and the value of the land or services provided by the State, rental charges based on volume constitute an unlawful burden on interstate commerce. DOD has argued before the Interstate Commerce Commission and believes that it is that Commission's view that pipeline transportation of petroleum within a single state following interstate or foreign water carriage is in interstate commerce and subject only to I.C.C. jurisdiction. *United States Department of Defense v. Interstate Storage and Pipeline Corporation,* I.C.C. Docket No. 36217; *Monsanto Co. v. Alton Southern Ry. Co.,* 339 I.C.C. 319 (1971); *Osborne McMillan Elevator Co. v. M., St. P. & S.S.M.R. Co.,* 306 I.C.C. 155 (1959). Because the proposed volume charges are based on a commodity moving in interstate commerce, and in the absence of evidence establishing a link between the commodity volume and nature of the services provided by the lessor, such charges constitutes an unreasonable burden on interstate commerce.

Conclusion

It is obvious that the ultimate result of the volume charges proposed is to increase the costs of transporting petroleum in the State of California, costs which will be passed along to the users of such services. Unlike commercial businesses, the Department of Defense cannot pass increased costs on to customers who may choose or not choose to buy more expensive goods and services as they

see fit. With respect to petroleum volumes shipped by the U.S. Government, the increased charges proposed will be borne ultimately by the taxpayers, including the citizens of the State of California. The Commission should give careful consideration to this fact and to the other considerations raised herein.

Respectfully submitted,

/s/ Dellon E. Coker
Chief, Regulatory Law Office
Office of The Judge
Advocate General
Department of the Army
Washington, D. C. 20310
For
The Secretary of the Army

Cpt Paul M. Scott
Attorney
Of Counsel

[Certificate of service omitted in printing]

STATEMENT BY PACIFIC GAS & ELECTRIC COMPANY

DATED APRIL 21, 1976

Statement of
Pacific Gas and Electric Company
by
J. Peter Baumgartner, Attorney
before the
Division of State Lands
April 21, 1976

INTRODUCTION

Pacific Gas and Electric Company (PGandE) opposes certain features present in the State Lands Commission (SLC) proposal to repeal Title 2, California Administrative Code, Article 2, and substitute new Articles 2 and 2.5 therefore. PGandE's interest in the matter is based on its ownership of several marine petroleum terminal sites and many river and other wetland natural gas pipeline crossing sites presently under lease from SLC. The amendments objected to would, if enacted, allow the State Lands Commission to impose a "throughput" charge on an "ad hoc" basis for any commodity, including crude oil, petroleum products, natural gas and liquified natural gas, and related products passing through pipelines that are located on State lands.

This is not a new proposal. In 1974, the Auditor General proposed similar "throughput" charges to be applied to SLC administered leases for marine terminal sites. No rationale supporting this concept has ever been advanced by the SLC.

In 1975, the Commission ordered an investigation by the Division of State Lands into the concept of rental rates based on "throughput." That proposal would have man-

dated the imposition of a "throughput" charge based on a prescribed rate times the unit of oil or gas whenever that charge would yield a greater return to the State than the standard rental. PGandE opposed the concept for various reasons, including an estimated additional financial impact on the Company's electric and gas customers in the order of $4 to $5 million annually in an era of rapidly escalating energy costs, the lack of any relationship of the charge to the value of the lease to the lessee, and that it was, in fact, a "tax" on the products carried in interstate commerce already pervasively regulated by the Federal Government. No rationale was advanced by either the State Lands Commission or the Division of State Lands to support the "throughput" charge.

Comparability with Port Facilities

The use of marine terminal facilities, which are controlled by various port authorities in the State, is not a proper comparison to the offshore marine sites being leased by the SLC. A port authority generally undertakes various engineering, construction, and maintenance responsibilities, and provides security for the facility which, in return for the "throughput" charge, provides the lessee with wharfage, dockage, and usually land for necessary facilities. The annual rental charge by the port authority is generally an amortization of the cost of such facilities over the term of the lease agreement. The lessee receives the use of the improvements and the "throughput" payments are used by the lessor to defray the cost of services which he provides. In the case of the marine terminal leases, which PGandE holds from the SLC, the SLC does not lease marine terminal facilities, but rather it leases unimproved marine terminal sites in which the State has made no investment and on which the State intends to expend no funds. All improvements are provided by the lessee. Even aides to navigation are provided by the lessee and are

maintained at the lessee's expense. Equating the lease fee, based on throughput of oil through improved facilities with the "throughput" charges proposed in the amendments for SLC unimproved tidelands, is unreasonable.

The same rationale underlies PGandE's opposition to the application of "throughput" charges to natural gas moving through pipelines buried under the State's inland navigable waterways. The "throughput" charge may be likened to the tolls collected by the California Toll Bridge Authority. An auto driver crossing the series of toll bridges will pay a toll each time he crosses a bridge. If the proposed amendments are enacted, the SLC may collect a tax on each unit of gas or oil each time that unit proceeds through the pipeline buried in an SLC lease. But, there the similarity ends. The Toll Bridge Authority, in return for the payment of the toll, provides and maintains an expensive bridge structure. The tolls are used not only to maintain the bridge, but also to amortize the capital investment. In the case of natural gas pipelines, the State provides only an unimproved underwater lease site. The lessee is required to provide the total capital investment, maintain the pipeline, mitigate any environmental consequences, and bear the burden of risks of danger to persons and property resulting from lessee's operations.

It should be noted that SLC leases for natural gas pipelines and fuel oil pipelines in unimproved terminal facility leases are essentially nonexclusive leases. The lessee's facilities interfere in no way with the multiple use of the water by others. With the exception of the small periods of time when marine terminal berths are actually occupied by tankers, others are free to use the waterway for recreational and commercial purposes. Natural gas pipelines, likewise, are no barrier to the commercial or recreational use of the waterway or the river bottom. It is PGandE's position that the extraction of a "throughput"

charge, as an alternative to annual lease payments based on the appraised value of the land, is the extraction of a fee for no services rendered.

Impact on the Consumer

The imposition of "throughput" charges would have a direct impact on PGandE's electric and gas rate schedules for the average citizen in PGandE's service area, which includes most of Northern and Central California. Assuming the "throughput" rates imposed are comparable to those contained in the 1975 proposal, the increase in costs to be expected can be exemplified as follows:

PGandE's present lease payments at Morro Bay for 58 acres of land and about 3,000 feet of buried pipe are $28,420.08. Applying the "throughput" charge from the 1975 proposal to the estimated fuel oil requirements for 1977 at Morro Bay will cause the payments to escalate to an excess of $75,000.

"Throughput" charges seem particularly inappropriate for our electric utility fuel because, except for small quantities of low sulfur crude, almost all of our low sulfur fuel is residual oil from California refineries. Assuming the imposition of a "throughput" charge on the refiners, our electric customers will pay the charge as many as three times; once when the oil company brings crude in, once when the residual commodity is shipped out, and once when it is delivered to PGandE through Company facilities.

PGandE serves a population of 8.6 million people of which 7 million customers are gas customers. In order to serve these customers, PGandE has 4,815 miles of natural gas transmission pipelines and 26,000 miles of distribution pipelines. Through these pipelines, we deliver 672 billion cubic feet of natural gas annually. Some additional quantities of natural gas are delivered to the fossil fuel steam electric generating plants for the generation of electricity.

Lease payments on two of PGandE's Canadian gas line crossings of the San Joaquin and Sacramento Rivers would rise from $6,920 to $856,640 if the 1975 proposed rates were imposed. The increases for these two exemplary leases result in payments 123 times as great under the "throughput" charge proposal as under the usual method of calculating lease payments.

"Throughput" charges would, in effect, place an indirect tax upon the utility customers within our service area since such a charge would become part of the operating expense in deriving electric and natural gas rates. The additional costs of metering facilities necessary to accurately determine gas flow through the lease would be added to the rate base. Such indirect taxations seem unjust in light of the large increases in electric and gas rates that have already occurred due to rising costs of energy producing fuels. It is also possible that such a "throughput" charge would approximate a tax on Interstate Commerce, particularly with respect to the Colorado River natural gas pipeline crossing and the marine fuel oil terminals.

PGandE's studies, in response to last year's proposal, show that the Company would be passing through to its customers an additional cost attributable to the "throughput" charges of $4 million annually. Because there is no rate set in this year's proposal, the potential impact is much larger. The cost of new supplies of gas delivered in California will be very much higher in the future. PGandE is concerned about the ever increasing burden that consumers are being asked to bear. The additional burden cannot be avoided when it is rationally related to the increased costs of essential services and raw materials. It is PGandE's position that when increased costs are not rationally related to essential services and raw material costs, it is indefensible to place this burden on consumers of essential energy, many of whom are elderly and poor

and who are less able than others to subsist without a plentiful supply of electricity and gas.

As a regulated utility charged by law with providing an adequate and reliable supply of essential energy in two forms to almost all of Northern California, the Company's planning and operations are continuously monitored by State and Federal agencies. From the design and location of power plants to the selection and routing of fuel alternatives, from the price at which we obtain fuel to the price at which we sell energy, our decisions are scrutinized by the Energy Commission, the Public Utilities Commission, the Federal Power Commission, the FEA, the NRC, and a host of other agencies. The imposition of "throughput" charges on utilities will have a grievous, if presently an unquantifiable input on the Company's operations, rates, and planning, all of which are regulated. For example, if larger "throughput" charges are imposed on one type of fuel, another becomes much more economical not only in our own plants, but in the plants, businesses, and homes of our customers. The available choices are being investigated and guided now by the "alphabet" agencies based on a careful evaluation of all the facts and their ramifications; it should not be State policy to convert every lease application into a system wide rate, operation, and planning decision whose impact may distort the announced policies of the State and Federal agencies who are attempting to construct a rational energy policy for the State. The purvase regulation of utilities furnishes a sound legal basis for exempting the facilities of publically regulated utilities from "throughput" charges. At the least, the SLC should refer the proposed regulations to the appropriate regulatory agencies for investigation, analysis, and comment.

Not once during the last three years has the Commission or the Division of State Lands set down in plain English a

rationale for imposing "throughput." Not one scrap of evidence, factual or conclusionary, has been introduced which would support the changes in the rental regulations as proposed. PGandE urges the State Lands Commission to reject the "throughput" charge technique as a basis for computing rental charges on SLC administered leases, particularly for utilities. The proposed alternative method of computation of an annual rental, based on the appraised value of the land plus a fixed fee based on the diameter and length of the pipeline buried in leased lands, will produce revenues sufficient to yield a reasonable rate of return for the use of the State's submerged lands.

STATEMENT OF WESTERN OIL & GAS ASSOCIATION DATED APRIL 21, 1976

Statement on Behalf of the
Western Oil & Gas Association
Before the
California State Lands Commission
Sacramento, California
April 21, 1976

Re: Proposed Changes in the Commission's Leasing Regulations to Permit Imposition of Throughput Charges

My name is Greg McClintock. I am appearing here today as attorney for the Western Oil & Gas Association, which, as you may be aware, is a trade association whose members conduct more than 90% of the production, refining, transportation and marketing of petroleum and petroleum products in the Western United States, including the State of California. I respectfully urge the Commission to reject the proposed changes in your regulations which would allow the imposition of a throughput charge. However well intentional these proposed changes may be, we believe the Commission is being asked to do something that is clearly unlawful and beyond its authority. We come to that conclusion for the following reasons:

First: What is being proposed is an entirely new system of establishing rentals for the use of unimproved State lands—a charge for the use of such lands based *not* on what the State has given up or even on the costs to the State of administering its leasing program, but rather a charge based on the amount of product being transported across the land.

As I am sure the Commission is aware, valuation of easements and rights-of-way across both State and private property have traditionally been based on the concept of restoring the owner of the property to the same economic position he would have been in but for the granting of the

easement or right-of-way. This traditional method of valuing easements and rights-of-way—a method designed to prevent a windfall to the owner of the property by reason of his strategic location in the pathway of some necessary facility—has been codified into law in California. Section 6503 of the Public Resources Code instructs the Commission to "appraise the land" and establish its rentals based on that appraisal. The existing regulations, for the most part, are in harmony with the statutory directive and traditional easement and right-of-way valuation concepts. A charge based on what is passing over the land, however, would have no nexus with the value of what the State has given up or with the land's appraised value.

Second: Many of the easements and rights-of-way which could be affected by the proposed throughput charge are used to transport commodities that have arrived in the State or are making their departure by vessels or pipelines which cross State boundaries or enter Federal waters. Charges based on the volume of commodities being so transported have historically been overturned by the Courts as impermissible restraints on the free movement of interstate commerce, and such charges have invariably been found violative of the Federal Constitution where, as here, none of the factors which the Commission would be permitted by its proposed regulations to consider in imposing the charge can be related to the volume of the shipments being made. The factors which could be considered by the Commission all relate to either the value of the improvement made by the lessee, which cannot be taken into consideration at all in appraising the value of the land, or to the size of the facility which would be constructed on the State's land, thus affecting the value of what the State is giving up. There being no permissible basis on which the Commission could justify the imposition of a throughput charge, it would fall within that class of charges which are forbidden because they inhibit free commerce.

Third: To the extent that marine transport is associated with a State lease, a throughput charge would be further violative of the Federal Constitution because such a charge would be what is technically known as a duty on "tonnage." Many of the easements and rights-of-way which have been leased by the Commission service marine terminals.

Fourth: The imposition of a throughput charge by the State, even a relatively modest one, will undoubtedly have the effect of inducing a wide range of other governmental agencies and possibly private landowners to impose similar charges. And to the extent that several crossings of State land would be required for particular pipelines or products are changed into a different commodity before making the same crossing a multiplier effect could come into play which would greatly escalate transportation costs. The proposal therefore has substantial potential for exerting pressure to substitute rail, truck and tanker transportation for pipelines. It need hardly be emphasized that major environmental impacts would result from such a shift.

Even in the absence of such a shift, the substantial increase in total revenues to the State which would result from all such leases might ultimately impact on consumer prices, creating economic pressures which would, in turn, have their own environmental effects. There being no exemption from CEQA for this type of State action, it appears obvious to us that the preparation of an environmental impact report dealing with these potential consequences is required. So far as we are aware, no such report has been prepared.

Beyond these legal problems, and from a purely practical point of view, the adoption of such a proposal at this particular time, when the consumer and the business community are already struggling under the very heavy

burden of inflated costs in all sectors of the economy would seem particularly unwise. The potential ripple effect (imposition of similar charges by other public and private landowners) could make many activities—not only petroleum transport, but the transportation of electricity, water and telephone signals—economically prohibitive. We do not believe the State Lands Commission really intends such consequences or would accept them solely to increase revenues to the State.

For both the various legal reasons outlined above and the unwelcome practical consequences which could flow from adoption, we most strongly urge the Commission to reject this proposal and retain its current regulations, regulations which we believe provide the State with a more than fair return for the property rights being given up.

Thank you very much.

LETTER FROM SAN DIEGO GAS & ELECTRIC COMPANY DATED APRIL 20, 1976

April 20, 1976

State of California
State Lands Division
1807 13th Street
Sacramento, CA 95814

Attention: Mr. James F. Trout
Manager, Land Operations

Gentlemen:

San Diego Gas & Electric Company has reviewed the latest regulations proposed by the Commission as expressed in your letter dated April 8, 1976, and would like to offer the following comments.

In the interest of avoiding repetition and duplicating our past efforts, we ask the Commission to refer to our letter dated April 25, 1975 (copy enclosed) which summarized and graphically illustrated our areas of concern and disagreement regarding the methodology of such Commission regulations.

The most noticeable revision to the latest regulations is the absence of a rate schedule employing the volume of commodity concept. Not knowing how the Commission will apply this concept, we must take exception simply on the basis of it being too vague and ambiguous.

We and other utilities have conceptually agreed that the Commission is entitled to a reasonable rate of return for the use of State lands while employing and adhering to universal land appraisal practices. To additionally burden

the utility industry with regulations employing the volume of commodity concept appears to disregard the adverse ramifications that are surely to follow. The interest of the customers we serve demands consideration because they will ultimately be the recipients of these rate increases proposed by the Commission.

Sincerely,

/s/ R. L. Ellis, Manager
Engineering Land Department

SAN DIEGO GAS & ELECTRIC COMPANY

April 25, 1975

State of California
State Land Commission
1807 - 13th Street
Sacramento, CA 95814

Attention: James F. Trout
Manager, Land Operations

Gentlemen:

Your April 7, 1975 letter presented proposed revision of regulations for non-extractive lease operations on State owned lands under the jurisdiction of the State Lands Commission.

San Diego Gas & Electric Company vigorously objects to the proposed "throughput" charge for crude oil, petroleum products, natural gas and liquefied natural gas passing through pipelines located on State owned land because of the unfair burden it will impose upon our electric service customers.

The proposed "throughput" charge would have major impact upon our Encina Offshore Mooring Facility and connecting pipeline at our Encina Power Plant in Carlsbad, California. This is the only mooring facility in our region capable of handling the 70,000 dead weight ton (dwt) tankers (431,000 barrels (bbl) capacity) which deliver most of the low sulfur fuel oil we are required to use by Air Pollution Control District regulations. Thus, essentially all of the fuel oil used in our fossil fueled electric generating plants must be delivered to Encina with a portion later trans-shipped by barge to San Diego Bay for use in our South Bay, Silvergate and Station "B" power plants. This

double handling trans-shipment operation is forced upon us by the inadequate depth of San Diego Bay which can only accommodate fully laden T-2 class 17,000 dwt tankers carrying 105,000 bbl or partially laden 35,000 dwt tankers carrying no more than 160,000 bbl.

San Diego Gas & Electric Company must use fuel oil in increasing quantities for electric generation because of the growing unavailability of natural gas for this purpose. The following tabulation illustrates the increased dependency on fuel oil:

Year	Natural Gas	Fuel Oil	Other (1/)
1971	53%	28%	19%
1975 est.	28	57	15
1980 est.	0	94	6

(1/) Purchased energy and nuclear.

According to Schedule A of the proposed regulations, the "throughput" charge for our 3525 foot Encina pipeline would be at a rate of 1.6¢ per barrel. Based on the estimated quantities of fuel oil to be delivered to Encina in the 1975-1980 period, the "throughput" charge would be as follows:

Year	Million Barrels	"Throughput" Charge In Dollars (Rounded) @ 1.6¢/bbl
1975	9.098	$145,000
1976	11.999	192,000
1977	14.662	234,000
1978	15.828	253,000
1979	16.920	270,000
1980	17.697	283,000

This added cost of fuel for generating electricity must be borne by our customers who have already been burdened with major increases in the cost of oil fuel. It certainly seems inappropriate for one arm of State government—

the Public Utilities Commission—to order us to do everything possible to keep the cost of fuel down while another State agency is proposing to raise the cost of fuel. The "throughput" charge for natural gas which would immediately apply to our gas lines crossing San Diego Bay to provide gas service to the community of Coronado, is similarly inflationary.

San Diego Gas & Electric Company submits that a "throughput" charge is not an appropriate means for determining pipeline rights-of-way rental. It is a complete change in the present universal practice of relating rights-of-way rental upon unimproved land to the value of the land. To our knowledge use of "throughput" charges have historically been applied by public agencies which are amortizing investment in plant or facilities such as wharfs and docks, tanks or pipelines.

We do not object to the recommended increase from 6% to 8% for annual rent based upon the value of the land which appears reasonable and consistent with standard practice. This form of rent could also be charged for a reasonable strip of land covering pipelines or converted into an equivalent alternative such as the present charge of 1.5¢/diameter inch/lineal foot of pipeline/year.

On behalf of our customers, San Diego Gas & Electric Company vigorously objects to the proposed "throughput" charge. Our customers have already been burdened with significantly increased utility rates and face further increases because of economic and inflationary factors over which neither our Company nor the State have control. The imposition of State mandated increases appears to be totally inappropriate.

If for reasons not apparent in your letter of April 7, 1975 the general public interest requires imposition of a surcharge such as the proposed "throughput" charge, the

regulations should clearly exempt all forms of fuel transported across lands under the jurisdiction of the State Lands Commission for use by utilities in electric generation and natural gas for ultimate distribution to a utility's customers or provide a rebate to off-set the surcharge.

Sincerely,

/s/ C. M. Laffoon

cc: Kenneth Cory, Chairman
State Lands Commission

William Northrop, Executive Officer
State Lands Commission

LETTER FROM
SOUTHERN CALIFORNIA EDISON COMPANY
RECEIVED APRIL 21, 1976

State of California
State Lands Commission
1807 - 13th Street
Sacramento, CA 95814

Attention: Mr. James F. Trout
Manager, Land Operations

Gentlemen:

On behalf of Southern California Edison Company, I would like to offer the following comments regarding proposed changes to the Commission's rental regulations, Article 2 of the California Administrative Code. These comments supplement our comments to you set forth in my letter of May 2, 1975.

As we stated in our letter of May 2, 1975, Southern California Edison Company is strongly opposed to the proposed throughput charge on oil moved by pipeline across State-owned lands because it is unreasonable and unfair. *Such charges will only place additional cost burdens upon electric ratepayers of Southern California* who have in recent years been burdened with rapidly escalating electric rates due to the effects of general inflation, skyrocketing fuel costs and the required use by utilities of higher proportions and quantities of high quality, high cost, low sulfur fuel oil.

Proposed Sections 2006(b)(2) for *Industrial Leases* and 2006(b)(7) for *Rights of Way* provide as an alternative rental a throughput charge based on volume. This alternative rental fails to specify the rate at which such a charge is to be applied. Because of our increased dependence on fuel oil, as evidenced by decreased availability of natural

gas, and uncertainties regarding future generating sources, we believe the consequences of such throughput charges will be to contribute to increased costs of electric service to our customers. It is our opinion that ratepayers should not be penalized for expected increases in volumes of oil which pass over State lands.

Proposed Section 2006(c) sets forth the various factors which are to be considered by the Commission in determining which of the alternative rentals is in the best interests of the State. The Section significantly fails to include among such factors the economic costs of each alternative rental to utility customers.

Proposed Section 2007(b)(2) is apparently intended to limit rental rates for right of way based on volume by apportioning in the proportion that the length of a pipeline passing over State lands bears to the total length of the pipeline. It is unclear what the limiting factor is and further what charges would be computed based upon this formula.

It is our concern that the overall consequence of these regulations will be to add another unnecessary increment to oil costs which must be passed on to our customers.

We once gain suggest that if the proposed regulations are adopted, that they be revised to specifically exempt from the throughput charge fuel moved by pipeline across State lands for ultimate use by utilities who have a public service responsibility to provide service to their ratepayers at lowest reasonable costs.

Very truly yours,

/s/ P. B. Peecook

EXCERPT FROM
TRANSCRIPT OF STATE LANDS COMMISSION
MEETING OF APRIL 28, 1976

* * *

[A.R., p. 654*]

EXECUTIVE OFFICER NORTHROP: Mr. Chairman, this is a project that the staff has been working on for over a year. We are now ready to propose to the Commission the adoption of some regulations on volumetric rental rates. You have **[A.R., p. 655]** in front of you, I believe, a report which was circulated among all of you prior to this meeting.

I think, at this time, Mr. Taylor's office and Mr. Trout's office have done a great deal of work on this. I would like, at this time, to turn the area of the presentation for the staff to Mr. Taylor, Mr. Trout, and Mr. Hight.

Mr. Taylor, would you care to lead?

MR. TROUT: Maybe I will take the lead, then.

The Commission will probably recall that early in your tenure here as Commissioners, last March, you proposed volumetric rental rates and a general number of changes in the regulations to bring rental rates currently to the market place.

Following the Commission action in March, hearings were held April 29 in Sacramento, and May 2nd in Long Beach, on the new rental regulations. Those hearings produced only comments concerning the volumetric rental rates, and one gentleman appearing concerning salaries. All but the volumetric rate schedule were adopted by the Commission in May, 1975.

At that time, the Commission directed the staff and the Office of the Attorney General to conduct additional review and hold additional hearings and make additional deter-

*Page references are to pages of the State Lands Commission's Administrative Record which contain the reporter's transcript of proceedings for April 28, 1976.

minations as necessary. Meetings were held with the public utilities as a group on July 22nd, 1975; with the [A.R., p. 656] common carriers on July 23rd, 1975; and with representatives of the oil industry on July 31st, 1975.

In reviewing this, the Office of the Attorney General retained an evaluation consultant familiar with special use property appraisals. The Division staff and the consultant continued to investigate leasing processes of major California ports, examined numerous right-of-way leases issued by public and private entities, and, in general, conducted a search of data relating to the leasing of similar lands.

The points brought out by those appearing at the hearings were basically these: That the initially proposed schedule would result in a rental being charged several times for the same product. That there was a potential pecuniary defect if the State adopted the rental based on volumetric charge. That other landowners might well charge on the same volumetric basis, with the result being a prohibitively high transportation cost, even if there were no precedence for the imposition of a volumetric charge. And four, that the proposed fixed rental schedule would result in an arbitrary, discriminatory, and unjustifiable rental being imposed by the Commission.

On review, we find that these situations are not a result of volumetric rental rate charges. We find that the private landowners frequently charge for logging based on the [A.R., p. 657] amount of board feet transported over the road. Here the responsibility for road construction and maintenance is generally the responsibility of the timber harvester.

There is evidence of a first-time throughput charge for rights-of-way used for hauling coal. The City of Seal Beach, in return for a franchise to use city-owned streets, charges Exxon two percent of the royalty paid the State on offshore oil and gas. The private property leased by the Hollister Estate Company, in return for the use of pipe line rights-of-way, charges two percent of the royalty paid to the State.

A portion of the wharfage charge imposed by ports for the off-loading of cargo on port lands represents a throughput charge for use of unimproved lands. Similarly, it appears that a portion of throughput charge imposed by pipe line operators for the use of their pipe lines necessarily goes to recover and obtain the return of right-of-way costs.

Percentage leases form a variable rental lease also where the amount of rental is influenced by volume. In this case, the volume was goods sold. It might be bourbon highballs, or something, but the same kind of thing.

The revised proposal before you today is based on the following staff determinations: That land rentals, varying with the volume of commodities passing over [A.R., p. 658] unimproved lands, is being enjoyed by other landowners in similar situations.

Two, that volumetric rental is otherwise reasonable and under all circumstances may be employed as one of the alternative rental basis used by the Commission. Instead of adopting an inflexible schedule of volumetric rental rates, uniformly applicable to widely varying factual situations; it is preferable to refer to the volumetric rental concept based on several alternatives and several options available for use by the Commission, at the same time, providing it with some criteria for establishing and applying its rental concept.

Now, several additional proposals, or objections, have been raised including the fact that the Code requires appraisals, that an environmental impact report is required, that the rental rate is, in fact, a charge and would be an unreasonable burden on interstate commerce. We find that none of these proposals have any merit. In the staff's judgment, the proposed regulations as revised have a sound basis in fact and in law. Your staff recommends that they be adopted by the Commission.

* * *

REPORT OF THE STATE LANDS DIVISION ON VOLUMETRIC RENTAL RATES PRESENTED AT STATE LANDS COMMISSION MEETING APRIL 28, 1976

[This report is printed as Exhibit 1 to the affidavit of Gary H. Horn, set forth earlier in this Joint Appendix, and is not reprinted here.]

PORT OF LONG BEACH TARIFF NO. 3 [EFFECTIVE JANUARY 15, 1975]

* * *

SECTION 1—DEFINITIONS—Continued

WHARF—WHARF PREMISES

Item No.

(a) "Wharf" shall mean and include any wharf, pier, quay, landing or other stationary structure to which a vessel may make fast or which may be utilized in the transit or handling of goods and merchandise, and shall also include all the area between the pierhead and bulkhead line, excepting, however, such locations as may be set apart as public landings or for private use. 108

(b) "Wharf premises" shall mean and include, in addition to the area included in the term "wharf," other port terminal facility areas alongside of which vessels may lie or which are suitable for and are used in the loading, unloading, assembling, distribution or handling of merchandise.

* * *

MERCHANDISE

The term "merchandise" includes all goods, wares, material, freight, cargo, live animals, water, fuel, lubricating oils, vessel's stores and supplies, and other merchandise. 111

* * *

SECTION 2—PILOTAGE

DEFINITIONS

(a) PILOTAGE: The charge, calculated in accordance with the pilotage charges named in this tariff, assessed against a vessel, which is subject to the payment of pilotage under these rules, for the service rendered or proffered of piloting such vessel on entering, leaving or shifting in the Port of Long Beach. 200

* * *

SECTION 3—DOCKAGE

DEFINITION OF DOCKAGE

Item No.

DOCKAGE: The charge, calculated in accordance with the dockage charges named in this tariff, assessed against a vessel for berthing at or making fast to a municipal wharf, pier, bulkhead structure, or bank (inside berth), or for mooring to another vessel so berthed (outside berth). 300

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SECTION 4—WHARFAGE

WHARFAGE, DEFINITION OF:

Wharfage: The charge assessed against all merchandise (See Item 111), calculated in accordance with the whcrfage charges named in this tariff for the passage of that merchandise onto, over, through or under wharves or wharf premises (see Item 108) or between vessels or overside vessels (to or from barge, lighter, or water) when berthed at wharves or wharf premises or when moored in a slip adjacent to a wharf or wharf premise. Wharfage is solely the charge for use of wharves or wharf premises and does not include charges for any other service or 400

WHARFAGE, APPLICATION OF:

(a) Except as otherwise provided in this tariff, the wharfage charges named are in cents per ton of 2,000 pounds or 40 cubic feet, according to vessel's manifest, on whichever basis the water freight charges are assessed. 405

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WHARFAGE, CHARGES FOR:

Wharfage charges, as provided in this section, are in addition to all other charges contained in this tariff and shall, unless otherwise provided, be assessed against all merchandise, except that afforded free wharfage under the provision of Item 410 and shall be paid in accordance with Item 1225. 417

ARTICLES	Rates in Cents	Item No.
Merchandise, [not otherwise specified] (See Exception 1)	◆200	◆420
Exception 1: Free wharfage is provided for certain merchandise in Item 410.		
Merchandise, in bulk (See Exceptions 1, 2, 3, and 4)	◆ 70	
Exception 1: Gypsum Rock, in bulk, from self-unloading vessel at Berth 83	◆ 33	
Exception 2: Merchandise, in bulk, to vessel at Piers D and G by means of belt conveyor type mechanical ship-loaders or by gravity chutes, except: beans; feed, animal and poultry; grain and grain products; oil seeds; peas; pellets, alfalfa, beet pulp, copra, and cottonseed; safflower seeds; seeds, soy-beans; and related products, processed or unprocessed, in bulk	◆ 33	◆425
Exception 3: Grain originating in O.C.P. Territory as defined in Item 117, per bushel	◆ [illegible]	
Exception 4: Salt, in bulk	◆ [illegible]	
Merchandise, in bulk, in cargo vans	◆200	◆430
Bananas, per ton of 2,000 pounds	◆200	
Exception: Direct from vessel by private mechanical conveyors, per ton of 2,000 pounds	◆175	◆435
Boats, including launches, skiffs and yachts (including trailers and/or cradles) per 40 cubic feet (Subject to Notes 1, 2 and 3)	◆200	
Note 1: The maximum charge for a boat shall be $3.20 per lineal foot.		◆440
Note 2: When shipped in cradles or on trailers, the length of the cradle or trailer shall be included in the overall measurement.		

ARTICLES	Rates in Cents	Item No.
Note 3: Applies only in the Hawaiian Trade.		
Buildings, Modules, including mobile, per section	◆6500	◆443
Coffee, green, in bags, per ton of 2,000 pounds	◆200	◆445
Cargo Vans, (See Item 122), empty, having 70 cu. ft. or more space set-up, when no freight charges on the van itself are assessed, per ton of 2,000 pounds	◆200	◆450
On all other cargo vans, except those on which no wharfage shall be assessed under Item 410(i), Merchandise [not otherwise specified], rates shall apply.		
Containers and Carriers, (used) shipping, empty [not otherwise specified], set-up or K.D. (not including bags and sacks), per 40 cu. ft. or 2,000 pounds, whichever yields the greater revenue	◆105	◆455
• • •		
Fresh Fruit and Fresh Vegetables, manifested on a per package basis, per ton of 2,000 pounds	◆200	◆460
Liquids, except petroleum and petroleum products and water, as provided in Section Seven, in bulk, from and to vessel through private line	◆ 40	◆465
Lumber and Lumber Products, viz.:		
Lumber, logs and timber, per 1,000 ft. [board measure]. (See Note 1)	◆360	
Cedar, Fir, Pine, Redwood, Spruce and all other softwood lumber, logs and timber, [not otherwise specified], including Laths, Shingles, Shakes and Ties, coastwise, inbound, per 1000 ft. [board measure]. (See Note 1)	◆133	◆470
Dunnage and Ship Lining (other than as provided in Item 410) per 1000 ft. [board measure]	◆300	
Piles and Poles, per lineal foot	◆ 4	

ARTICLES	Rates in Cents	Item No.
Note 1: If freighted by vessel on other than a B.M. basis, the Merchandise, [not otherwise specified], rate shall apply.		
Paper, viz.:		
Newsprint and wood pulp, per ton of 2,000 pounds	◆175	◆475
Passengers, each (See Exceptions 1, 2 and 3)	150	
Exception 1: Charges do not apply to passengers on vessels where accommodations are limited to 12 or less		
Exception 2: Charges do not apply to passengers traveling to or from points within a radius of 100 miles of the Port.		480
Exception 3: Charges do not apply to passengers traveling on vessels when exclusively engaged in accredited college or university educational programs.		
Petroleum and Petroleum Products:		
In bulk from or to vessel, direct through private line, per barrel of 42 gallons (See Exception)	◆ 01.33	
Petroleum products, except gasoline, in bulk, moving direct between vessel and tank car or truck	◆ 40	◆482
Exception: From barge to vessel at municipal wharf, when barge not previously loaded at municipal wharf, or at any other oil loading wharf designated by the General Manager, per barrel of 42 gallons	◆ 02.66	
United States Mail, per ton of 2,000 pounds	◆320	◆484

* * *

	Rates in Cents	Item No.
Vehicles, Motor, self-propelling, viz.: (See Exception) Automobiles, Pleasure, Passenger, Commercial or Freight, including chassis, freight trailers or freight semi-trailers, not boxed or crated, S.U. on own wheels, per ton of 2,000 pounds. (When boxed or crated, the Merchandise, N.O.S., rate shall apply.)	♦678	♦486
Exception: Does not include agricultural, earth-moving or road making equipment.		
Vessel's Stores and Supplies, per ton of 2,000 pounds (other than as provided in Item 410)	♦200	♦490

* * *

SECTION 5—WHARF DEMURRAGE, WHARF STORAGE AND FREE TIME DEFINITIONS

(a) Wharf Demurrage is the charge, calculated in accordance with the Wharf Demurrage rates as provided herein, assessed against merchandise which remains on the wharf or wharf premises after the free time allowed.

(b) Wharf Storage is the charge, calculated in accordance with Wharf Storage rates as provided herein, assessed against merchandise which remains on the wharf or wharf premises and has been accepted for storage. 500

* * *

(e) Free Time is the specified number of days during which merchandise may occupy space assigned to it without being assessed Wharf Demurrage.

* * *